G. R. S. 58]

Previous references.

Legis 38-06 8h 15 A

1910.11

(Legis)

File No. 16 of 10.

Serial Nos. ~~1-3,6~~ 1-7

12-26 & 28

Later references.

Legis 7-15-3

152

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 ~~3,5~~ 7. 12-26 & 28.

Part B for April 1912

SUBJECT.

Deputation of the Govt Adv to oppose the claim of the Nawab of Kheyra to certain confiscated gold, before the Spl Magle K.G.F. in case No. 6798 as the subject of theft.

From The Dt Magle, Kolar. A. Of 6th Nov 1910.

Requests that Govt Adv may be instructed to appear before the Spl Magle K.G.F. on 21/11/10 on behalf of the Govt to oppose the above claim.

2. To The Dt Magle Kolar. Govt Adv & the Comp to Govt. J. 1431 - 30/11/10.

Requests him to appear before the Spl mag'l Ct.

3. From The Govt Adv. 144 Of 12/11/1910.

Requests to direct one of the State Geologist's Assistant to remain with him at the mines to conduct the case.

Original

18-8-

GPB—5,000—22-10-10

5 From the Govt Adv. 241 Of 17/3/11
Forwards a copy of the order passed by
in the case and directing its returns to the
petitioner as belonging to the Champion Reef
limits
6 From the Dt Magte. Kolar 7600/284 Of 16.3.11
States that the Dt Magte has admitted
the claim & has submitted the records
to the Chief Court for revision
7 To the Same Spl & Govt Adv
2658-9 Of 21/3/1911
Reports the Govt Adv to prefer an
appeal against the order of the Spl Magte R.9.7
12 To Govt Adv. 2660 Of 21/3/1911
Reports him to meet the 2
Councillor after his return to Bangalore
13 From the Govt Adv 3367 Of 2/6/11
Calls for a full report on the case
14 From the Same D.O. 3/6/11
Furnishes the information called for.
15 To the Hon Mr O.S. Sivasamy Aiyer
3642 Of 14/6/11
Forwards a statement of facts with
connected papers & requests to furnish opinion
16 From the Same
States that he will
& that his fee is Rs 250/-
17 To the Same Spl Adv No. 3618 Of 24/6/11
Agrees to the opinion fee of Rs 250/
and requests to send the opinion.
18 To the Govt Adv 247 Of 15/7/11
Returns the file of papers & requests him
to be prepared with the case.
19 From the Ca... Of 17/7/11 Acknowledges
the receipt of the file of papers.
20 From the Hon Mr P.S. Sivasamy Aiyer B.A.B.L
C.I.E.
Forwards his opinion & requests to
remit his fee.

Contd on Page 3

N.C. 43.
19.8.12.

G.R.S.11] 1900-4

GENERAL AND REVENUE SECRETARIAT

(Legislative)

NOTES.

File No. 16

FILE HEADING.

Deputation of the Government Advocate to oppose the claim of the Mining Board, K.G. Fields in regard to certain Confiscated Gold produced before the Special Magistrate K.G.F. in case no 679 of 1909-10 as the subject of the file

From

The District Magistrate, Kolar.

No. A. Dated 6/11/10 Received 8/11/10.

Diary No. 7768 | Enclos. Two Spare Copies. | Serial No.

BRIEF ABSTRACT OF LETTER.

Requests that Govt. Advocate may be instructed to appear before the Special Magistrate's Court, K.G. Fields on the 11th inst. on behalf of the Govt to oppose the above claim

NOTES AND ORDERS.

Submitted with a draft order for approval.

8/11/10.

1) The draft may be approved

8/11/10.

2nd) Draft approved by 2nd Councillor

3) Issue as submitted to Secretariat & Personal

10/11/10

9/11/10.

712.

Notes—First sheet.

GPB—30,000—3-4-07

G. R. S. 12]
General and Revenue Secretariat.

Leg File No. 16 of 1910-11

Serial No.

2 Govt order No. J 7431-3 / Leg 16-10-2 dt 11th November 1910 to the District Magistrate, the Govt. Advocate & the Comptroller Govt.

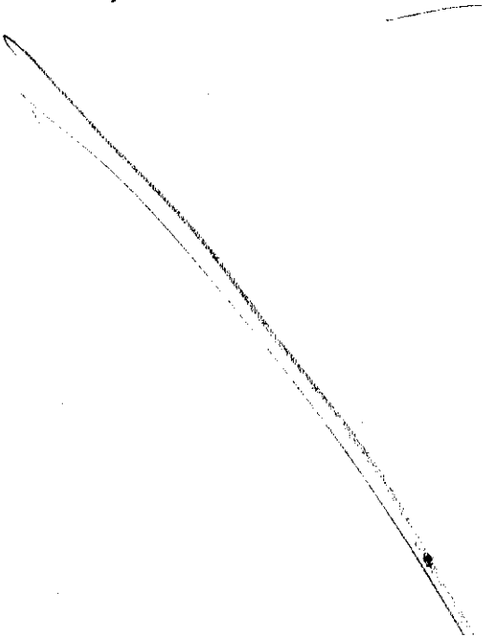
Requests him to appear before the I.A.C. Magistrate's Court, Kgtd. and assist on claim of the Superintendents of the mines referred to

Issued & Subd to Dewan for perusal-

SW
12/11/10

8696
12.11.10

4. Assistant Supdt, the matter submitted



NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

3 From the Govt. Advocate No. 1448. 12/11/10
Requests that in order to enable him to effectually conduct the case before the Special Magistrate's Court, Kolar Fields, the State Geologist may be asked to give him the necessary instructions in regard to the characteristics of Kolar mica gold & other gold. and to direct one of Assistants to remain with him at the enquiry

5. Submitted with a draft letter to the Secretary Geological Department. Secretary's orders

14/11/10.

H Bowes
H O & 14/11/10

(The file was submitted to Dewan on reference)

SR
14/11/10

6. 2222

To the Secry to Govt. Geol. Dept.
1462 of 14-11-10.
Requests that necessary instructions may be given to the Govt. Geologist & that one of his Assts may be ordered to remain with the Govt Advocate during the enquiry.

4

7 Subd to Dewan Memo & draft for perusal -

8 Seen.
There is little use in taking the time of Govt. Advocate as I can see. Please ask the Govt. Geologist to see me for a few minutes.

15/11/10

15/11/10

16/11/10

16/11/10

G. R. S. 12]
General and Revenue Secretariat. | File No. | of 190

4

Serial No. 9 Subd. with a draft Do.

K.N. 44.11

10. Issue

11. Any news of the [illegible]

12. [illegible]

13.

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 1910-11

5 15

Serial No.

16 Submitted with a draft D.O

58
8/12/10
8/12

15. Seen
Sd
8/12/10

D.O. dated 9th Dec: 1910
from the Govt Advocate
States that the case stands
adjourned to the 15th Instt

16 Submitted to Secy as ordered by the Asst Secy
58
9/12/10
Deewan

9162
9.12.10

CB
8/12/10
Sd
9/12/10

Note.—Contn. sheet.

GPB—55,000—27-4-09

Submitted to His Highness.

17. I submit for information the accompanying file of papers regarding a claim made by the Kolar Gold Fields Mining Board before the Special Magistrate, Kolar Gold Fields, that "unwrought gold" which an accused person may be found in illegal possession of should be handed over to the Secretary to the Mining Board, on the ground that the gold is the property of one or other of the Mining Companies represented on the Board, although it may not be possible to say from which particular mine it was stolen. Such gold has hitherto been confiscated to the Government. The claim which the Mining Board has repeatedly been making to the Government, was summarily rejected by the Magistrate, but the Chief Court have remanded the case for disposal on the merits.

X G.
Encl 6 81.1.

The Govt Advocate has been instructed to appear before the Special Magistrate on the 14th inst in support of the claim

29 Dec

7

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

Papers regarding the claim of the Mining Board to "unwrought gold" recovered from persons found in illegal possession of the same.

3.1.11
1737.

Order.

18 KRW
5/1/11

Sec G.
7/1/11

File
CSM
7/1/11

KRW
7/1/11

SH
7/1/11

7/1/11

G. R. S. 12]
G[illegible]al and Revenue Secretariat.

Key File No. 16 of 1910-11.

Serial No.

5. From the first Advocate No. 241 of 19/20/11

Forwards a copy (unauthenticated) of the order passed in the case holding the piece of gold as belonging to the Champion Reef Mine and directing its return to the petitioners in the case; states that for reasons specified that this is a fit case either for an appeal being preferred to the High Court or the latter being moved in its revision side and requests early orders in the matter, as the appeal or revision period would expire by 8th May. Withdrawn orders. An appeal may be authorized.

JKS (JS) 20/28/11 Secy. 20.3.11

SW (11)

This has been done. 22.3.11

Please issue orders asking Govt advocate to file appeal or revision pets. See orders on a communication from Dr. Nolan sent from Mysore to the office yesterday

CB 21/3/11

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Claim of the Superintendents of certain Mining Companies, K.G.F. in regard to a point in connection with Indirect heard before the Presidency Magistrate, Bangalore. File No. 6 of 1910-11. Subject of the case.

Serial No.

6. From the Dist. Magistrate, Kolar. No. 1600/252 dt. the 16th March 1911.

States that the Magistrate has admitted the claim; that under Sec. 438 of the Criminal Pro. Code he has submitted the records to the H. C. of Court for revision and requests that, pending the disposal of the case, the Govt. Advocate may be asked either to appear on the revision side or to prefer an appeal against the order of the Special Magistrate before a Division Bench of the High Court.

2. "Secy. to Council's orders on the above:— "An appeal may be filed" dt. the 20/3/11".

3. Govt. Secretary's remarks:-

"Issue orders accordingly. (Also "please write to Govt. Advocate. Secy. dt. "March 21st Dr. personally at Bangalore "dt. 20th 20/3/11".

Necessary drafts are submitted for approval. 21/3/11. The official file on the subject was submitted to Secretary yesterday for orders on the Govt. Advocate's reference for an appeal & hence not available now.

21/3/11 SW(11)

Issue to 21.3.11

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. ₩ 16 of 1910-11

Serial No.	
7	No. J 265-8-9 dated 21/3/11 Do The Dt. Magistrate Kolar and Govt. Advocate Requests the Govt. Advocate to ~~perform~~ ~~prefer~~ early an appeal against the order of the Special Magistrate K.G.F. and to report the result to Govt. in due course
D.O.	No. J 2660 dated 21st March 1911 Do S. Narayana Rao Esqr., Govt. Advocate Requests him to meet the 2nd councillor after his return to Bangalore.
~~8~~	~~No 253 dated 29/3/1911~~
9.13	Do Mr. S. Narayana Rao, Govt Advc D.O. ₩ 2360 dt 2/6-11 - Calls for a full report on the Case, the questions which have arisen for decision by the Chief Court and the arguments for meeting the same.
10	From the same, D.O. dt 3/6/11 Furnishes the information called for -

11 Two points arise for decision in the Case, viz:- (1) whether, on the Evidence before him the learned magistrate was right in concluding that the gold was "Champion Reefs" gold and

(2) if not, whether he was right in ordering the gold to be delivered over to the

NOTE— Contn. sheet.

Serial No.

petitioners" – that is, the mining Companies under Sec 57 J of the C. P. Code

The first question is of importance because if it is decided against us the 2nd question does not call for decision at all.

Upon this point viz whether the gold in question can be said to have been Satisfactorily proved to have been "Champion Reefs" gold, both the District Magistrate of Kolar and the Govt Advocate have offered for Court observations to Shew that the "proof" offered proves nothing. The Special Magistrate Rama Chandra Rao seems to feel that the Evidence before him is not very Satisfactory, as may be seen from the fact that at the Conclusion of his order he winds it up by saying that "whether the Evidence regarding the averages is believed or not, the gold must be the produce of Some one or more of the five mines represented". This is a very inconclusive termination to his argument which led him just before to hold that it (the gold) "must belong to the Champion Reef mine. The Evidence offered on this point

Note—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

Consists mainly of the testimony of Mr Leslie. His claims to be regarded as an Expert in the matter before the Court seem to be ~~[illegible]~~ very much weaker than those of Dr Smeeth, who, it will be remembered was not accepted as such by the Madras High Court (vide judgment in Obalareddi's Case).

Mr Leslie admits that he made only an "assay*" and not a complete analysis of the gold of the several mines, that he did not "assay" the gold Every Some of the neighbouring mines & that he bases his conclusions only on the "averages" struck by him. The two first admissions speak for themselves and regarding the last- it seems to be sufficient to remark that the "average" - which is a mere logical fiction - Can not be applied to individual Cases - though they may hold good when several Cases are Considered in the aggregate.

Much Stronger Evidence placed before the Madras High Court to prove that Certain gold was Kolar gold

* a process to determine the quantity of gold & silver in an ore

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

failed to convince that tribunal. On much weaker Evidence the Special Magistrate has gone a step further and held that it is the Lord of a particular mine. It seems to be therefore quite necessary to obtain sound legal opinion on this point also before the Case comes up for hearing in the Chief Court.

10 The second point has reference to the question of law involved in the Case. This point has been brought into prominence by the observations of the learned Chief Judge and Mr Justice Krishnaswami Rao in the Abbavaram Case order disposing of the Revision petition filed by the Supts. of the five Companies and they form the basis on which the Special Magistrate's last order - now under appeal - proceeds. ~~It is this point to be observed that these observations are contrary to a previous ruling the Chief Court reported.~~

These observations are tantamount to saying that though

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

none of the ~~mining~~ mining Companies could individually prove their title to the gold before the Court, it may be handed over to them "Common agent" if all of them are agreed that it might be so handed over and if it is proved that the gold must have belonged to one or the other of the Contesting Companies. Disregarding this last as a question of fact involved in the Consideration of question no 1 Supra, the proposition of the Chief Court amounts to saying that as between the Contesting Companies themselves the Court is absolved from the task of determining which particular Company is entitled to the gold. For this proposition there seems to be no warrant in the law of procedure. It is no doubt true that it is Sec 517 and not 520 of the Criminal Procedure Code that should be applied to such cases and perhaps the word "Confiscation" used in some of the previous rulings of the Chief Court on the point (vide Appeal no 158 of 2-57

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

is not perhaps the most appropriate word to be used. Nevertheless the discretion vested in the Court under Sec 517 — wide as it is as pointed out by the Ld Judges of the Chief Court — has to be exercised "judicially" and if no one individual or individuals succeed in making out their claim to the property in question, the Court is bound to pass the most Equitable order in the Case. It is perhaps on Consideration of this Character (vide Mr Justice Ranjundayya's observations on p. 8 of the printed Motion) that the claim of Govt to the Gold in question Can be sustained. Mr Justice Ismay Seems to have had them in mind when he refd to the decision of the Bombay High Court in I.L.R. XIX Bom p. 668, at the Concluding portion of his order.

There remains the further question whether the 5 Companies have got a Common agent in this Case. The the legal Character of the Mining Board has been well

Serial No.

described by Mr Bethell in his memorandum printed on pp 4 & 5 of the "A" Collection and it is clear that it can not pretend to be a "legal person". In so far as it represents each mining Company it does so in a different character and the plural character of the principals can not be hidden by the appointment of a single person as a "Common agent".

The learned Chief Judge has stated that in a Civil Suit a claim by more than one person asking for relief either jointly or in the alternative would not be bad for misjoinder. This is true but it has already been pointed out (by the 2nd Councillor to the Govt Advocate) that the decree in the Suit could not be in the alternative. The relief must be in favour of some particular individuals and if there are more than one jointly interested then in their favour. In the present case the claimants are not interested in the property jointly—

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

their interests are in fact mutually exclusive — and though they may ask in the alternative, the Court can only award in favour of a particular person.

The question whether the Govt can appeal or not is of minor importance that It does not appear whether an appeal lies in the matter. If it does not, the Chief Court may be requested to treat the appeal as a Revision Petition. The Govt are interested because the property is claimed on their behalf

The question whether legal opinion has to be obtained has not to be considered.

The case will be posted for hearing after the reopening of the Chief Court on the 19th inst.

Subd to 2nd as previously directed.

6/6/11.

GPB—50,000—12-8-10

G. F. S. 12]
General and Revenue Secretariat.

L File No. 11 of 19 11

Serial No.	
15	D.O. letter no. J 3442 dt 14.6.1911 to the Hon'ble Mr O. S. Sivaswamy Iyer. Forwards a memorandum of facts with connected papers in connection with the above case & requests him to furnish his opinion & Enquires if he is precluded from giving his opinion & what his fees are for giving the opinion & for appearing before the Court to argue out the case.
16	D.O. letter dt 21st June 1911 from the Hon'ble Mr Sivaswamy Aiyar. States that he will send his opinion early, that his fee for the [illegible] is Rs 250/- & if he is engaged to appear before the Chief Court, his fee for the 1st day will be Rs 100/- & 50 Rs 50 for every subsequent day.

Subd. for orders with references.
S.N (11)
23/6/11

we may perhaps intimate to Mr S. Iyer that we have agreed to the opinion fee which will be credited towards the engagement fee, if he is to be engaged to conduct the case.

we may perhaps also ask the Govt Advocate to have the case

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Leg

File No. 1 of 19 11

Serial No.

posted to Some Convenient Saturday in August ~~not later~~ preferably the 1st Saturday viz 5th.

23/6/11. SD

Sec)

2nd C

CBS
23/6/11

Let us first get the opinion. ~~Please~~ A reply may be sent as suggested.

SD
23/6/11

23/6/11

Reply amply (I shall sign finish copy)

Subd with a draft D.O.

CBS
23/6/11

SN(11)
24/6/11

Issue

CBS
23/6/11

Subd

SN
26/6

Sendup on the 1st July

SD

Yes 26/6

26/6/11

NOTE—Contn. sheet.

GPB—50,000—12-8-10

17

G.R.S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 19 10-11

Serial No.	
17	D.O. No. J 35-16 dated 24/6/11 to the Hon'ble P. S. Sivaswami Iyer B.A., B.L. C.S. agreed to the Opinion fee of Rs 250/- and requests him to send the Opinion early. Let the Govt Advocate be written to to have the hearing fixed. 4/7/11 Sd (Sd) 4/7/11 We may perhaps see the opinion first & then fix a date. 2nd
25.	I think so- 4/7/11 CSN 4/7/4 Sd 4/7/11 Keep file thus Sd 5/7/11
	Submitted with a D.O. to the Govt Advocate as personally ordered (Sd) SN(11) 14/7/11 14/7/11 Sd 14/7/11

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 1910-11

Serial No.	
18	(D.O.) No J 247 dated 13/7/11 to the Govt Advocate. Returns to him the file of papers in the case and requests him to be prepared with the case
19	(D.O.) No — dated 17/7/11 from the Govt Advocate. Acknowledges the receipt of the file of papers and informs that he would be ready with the case when it comes up for hearing in the chief Court.
	Submitted for information (S.D) SN (III) 18/7/11 5-1
	18/7/11. Reply has not been recd from Mr P.S. Sivaswamy Iyer. A draft reminder is sent for approval. SN 2/8/11
	5/8/11
—	Reminder issued as No J 459 of 3/8/11
—	Letter of 4/8/11 from Mr P.S. Sivaswamy Iyer C.I.E. Advocate General Madras

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

It seems that he hopes to be able to send his opinion in the course of the next week

4) Orders on the ~~Draft~~ letter "Asst Secy III"

Subd C.S.B. 4/8/11

"To be subd. to 2nd Cr for information

Subd S.H. 5/8/11

5) Subd. SN(11) 7/8/11

~~Subd (58)~~ 5/8/11

6) Subdtg under for info.

7/8/11 SH

7/8/11

Await opinion.

SH

7/8/11

GPB—50,000—12-8-10

22

Serial No.

20

No ~~77~~ dated 10th Sept; 1911

From The Hon'ble Mr. P. S. Sivaswami Iyer B.A., B.L. C.S.E.
Advocate-General of Madras

Forwards his opinion on the case, and requests that his fees may be remitted to him at an early date.

Orders on the D.O. letter :-

"Asst Secretary III for early action. Please have an order passed sanctioning the fee and instructing the Comptroller to arrange for payment in Madras.

~~Asst C.S.B.~~ 12/9/11

[Have we got the full records of Babu Sahi's case. The claim seems to rest more on points of fact than on points of law.]

Asst C.S.B.

Asst S.A. 12/9/11

Submitted. The fee 12/9/11 settled for opinion is Rs 250/-. A draft order sanctioning this fee and directing the comptroller to arrange for payment at Madras is put up. The two Law Reports viz 22 Cal. and 28 Mad. referred to in last para of the Advocate General's

NOTE—Contn. sheet.

GPB—50,000-12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 1910-11

Serial No.

Opinion is also herewith put up ~~(illegible)~~ The full record of the Babu Sahi case ~~in India~~ has been returned to the Govt. Advocate from whom it had been called for

~~(illegible)~~ (S.S.) SNC(11) 13/9
12/9/11

2 Sds draft about payment of the fee today and send up.

13/9/11

21 No. J 923-6 dated 13th Sept. 1911

~~From~~ The Comptroller and the Hon'ble Mr. P. S. Sivaswami Iyer B.A., B.L., C.I.E. Advocate General Madras.

Orders the payment of Rupees 250/- to the Hon'ble Mr. P.S. Sivaswami Iyer B.A., B.L., C.I.E., ~~for~~ Advocate General of Madras as his fee for having given his opinion in the matter.

Submitted for further orders.

~~(illegible)~~ (S.S.) 15/9/11

Rect 19/9/11

~~appear to be~~ as there are some mines which produce gold and yet are not represented on the Mining Board

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

it Can not be Contended ~~by the~~ nor that the fold must necessarily ~~have~~ have belonged to one or the ~~the~~ members Constituting the Mining Board

~~The matter has not~~

The matter has assumed a new aspect now and information has been called for from the Deputy Commr Kilan on certain points as ordered by the Divan on Mr Campbell's &c

20/9/14

Secy 67 2nd Cr

CM 21/9/14

68 With due deference to 21/9/14 the Advocate General ~~food-lador~~, I do not think that his opinion by any means Concludes the matter.

69 In the Cases cited as the nearest authorities, all the plaintiffs were to unite in Complaining of the same wrong done to them — though their titles to the property were different

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

But here, they cannot complain of any wrong done against them by government. If they do not succeed in proving that property in the hand of govt or a Court belongs to them they cannot succeed in getting it. If ~~to it~~ half a dozen Companies can club together and urge their claim collectively, it is difficult to see why the inhabitants of a street or a village should not succeed in similar claims in analogous circumstances.

If the case were as easy as this for the Companies, they ~~would~~ could hardly approach govt for an order on the executive side.

26/9/11

Dewan

13820

30.9.11

cfs 28/9/11

Mr Mackenzie

22/9/11

GPB—50,000—19-8-10

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 1910

Serial No.	
22	No 176 dated 4/3/12 From the Govt Advocate Informs that the case has been remanded to the lower court for further evidence and forwards a copy of the order passed Submitted The ~~original file~~ previous papers on with the Dewan Linked with the file re the claim of the Mining Board to all unclaimed unsmorged gold and mining materials ~~now in the custody of the Special Magistrate, Kolar Gold Fields~~ seized and produced before the State Courts (Legis 19 & 1911-12) The case has been remanded by the chief court to the lower court for further evidence and according to the order this evidence should be restricted to ascertaining what mines (if any) were working in or about March 1910 over and above the 5 mines which are represented before the court. This additional evidence should be certified to the chief Court within one month.

NOTE—Contn. sheet.

GPB—50.000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 19 10

Serial No.

from the date of the order and the appeal will then be disposed of. The date of ~~appeal~~ order being 28/2/12 the additional evidence should be certified to the chief court before the 28th March 1912.

(58) CW (11)
5/3/12

73 Subd to Sec'y and Dewan for perusal

6/3/12

74 The latter part of the Ch. Judge's note — in fact the whole tenor of it is worth noting.

52
1.3.12

75 Seen

6/3/12

12/3/12

7/3/12

18/3/12

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 16 of 1910-11

Serial No. 23

No 183 dated 11th March 1912 from the Govt Advocate ~~Bangr~~ informs that the 1st class magistrate Kolar Gold Fields writes to say that the Gold claim case which was remanded to his court by the chief court for additional evidence has been fixed for hearing for the 18th inst. and requests early instructions in the matter.

K Submitted for orders.

The copy of the chief court order in the matter sent by the Govt Advocate ~~has already~~ is now before the Secretary to whom it was submitted on 7/3/12

~~(58) SW(11)~~
12/3/12 7. The Govt Advocate may perhaps be ~~requested to~~ instructed to appear on behalf of Govt

SW

12/3/12

Lee 78. Yes & as regards evidence I believe the Govt dept ought to be able to say what mines were working &c. He may be examined on behalf of Govt & the records of his office produced.

7052 with PSA This has been disposed of. Secy

NOTE—Contn. sheet.

G. R. S. 12]

General and Revenue Secretariat.

File No. 16 of 1910

Serial No.

Evidence can also be elicited in Cross examr of any witnesses tendered by the Mining Board.

The Govt Secy maybe asked to instruct the Govt Advocate

(Sd/- A Devan) CHB 12/3/12

38

79. I can hardly see any use in our Contesting the case after the broad hints about the steps to be taken by the Companies if they wish to defeat the Case of the Govt. Even if we prove there are other Companies in the area, if they all club together, they should succeed accg to the Ld. Bh. Judge's dictum. Sd 12/3/12

80. ~~The~~ (The Govt Adv. in Consultation with the Geol. Secy may appear, if there is any evidence available) - Sd 12/3/12 Sd 12/3/12

151 13/3/12

81. Memorandum Suggested

NOTE—Contn. sheet.

GPS -20,000 - 20-1-12

G. R. S. 12]

General and Revenue Secretariat.

Legs File No. 16 of 1910

Serial No.

in the Rest Rules should be adopted — [Never despair]
Ltd 13/3/12

82:
Asstt Secy (1)
Please ask Govt Advt to appear & write Dr G
Govt Secy & instruct him re -
GST
13/3/12

83: Putup drafts
14/3/12 SH

8
submitted with 2 drafts
GS
14/3/12

83: 2 SSLy
14/3/12 SH

24 No J2695-7 dated 15/3/12
to the Govt Advocate and secretary
Geo. Deptt and the compiler

Regrets the Govt Advocate to appear
before the court of the Senior Asst
Commr and 1st class Magistrate Kolar
Gold Fields on Monday the 18th inst
for the purpose of getting the
necessary additional evidence record-

NOTE—Contn. sheet.

GPB—20,000—20-1-13

G. R. S. 12]

General and Revenue Secretariat.

Legi. File No. 16 of 1910 - 11

Serial No.	
	and requests the Secy Geo. Deptt to instruct the Govt Advocate &c.
25	D.O. No. 1 dated 15th March 1912 to the Secy Geo. Deptt. Requests him to instruct the Govt Advocate in the matter.
	86. Submitted to the Hon'ble Council for perusal of the Dewan's orders. (S-8) CN(11) 20/3/12 21/3/12
	Bn. 21.3.12.
	87. Hon'ble Member. 21/3/12
21/3/12 26	D.O. - dated 1st April 1912 from the Govt Advocate intimating that the gold claim case which had been remanded to the lower court for additional evidence he was received back and is posted for hearing on the 11th inst.
	88. Submitted for information (S-8) CN(11) 4/4/12
	6/4/12

NOTE—Contn. sheet.

GPB—20,000—20-1-12

Legis File No. 16 of 1910-11

Serial No.

28 No 223 dated 25/4/12
from the Govt Advocate
Reports that the chief court after hearing the further evidence have dismissed the petition of Govt, and forwards copies of the depositions of witnesses recorded in the court and the final order of the court

90. Submitted.
CB (SS) SN(11)
27/4/12 25/4/12

91. Subd for perusal
This practically settles the question /

See)
4/5/12 SA

92. 1st C & Decree

CSJ
4/5/12

375.

93. The result was long SA 4/5/12
a foregone conclusion. The case has in my opinion altogether gone on a wrong basis. The Sold ought to be confiscated to Govt

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

1 File No. of 19 ?

Serial No.

unless it is proved to belong not to any one of a number of persons, but that it does belong to a particular one.

94. I am afraid that the only way to repeal this erroneous rule is by legislating — perhaps too drastic a step for such a purpose. I should not at all be surprised if the Mines now come forward with a claim for all gold that has come into the possn of Govt in the past.

5/5/12

1326
16.5.12

Govt have all along claimed the Sponge bed only a prerogative of State in respect of property which is not found to belong to a specific person. The Judgment has gone on wrong lines, its to

* Linked file

Recd - 16.5.12

NOTE—Contn. sheet.

GPB—60,000—12-8-10

Serial No.

Revenue - Enquiries with a view to a short measure legislation to correct the effect of this remarks. Judgment - Dist. 23 May 12 Jones v. Saunders.

iii

Circulate

Ld
24/5

96 I am somewhat doubtful of the expediency of legislating; but the only line on which it should be done appears to be to add a provn either in the ~~Cons~~ Br. Pr Code or the Mines Regulation to the effect that no property in respect of which an offence has been committed or which is brought before a Magte for disposal under S. 518 (?) of the Br. Pr Code shall be delivered to a ~~party~~ person who does not establish a right

NOTE—Contn. sheet.

G. R. S. 12]

General and Revenue Secretariat. | File No. of 191

Serial No.

to it in his individual Capacity."

9.7. With due deference to the Judges of the Ch. Court & the Hon. Sivaswamy Iyer (Adv. Genl.) I think they are quite wrong in the position they take — that of a number of persons claim property but do not make out which exactly is the owner, they are entitled to get the property as a body. The Chief Court has given these Companies more than they ever ventured to claim.

The matter may be considered at an early meeting

6/6/12

Cases to be moved by the Adv. Genl & by the Ch. Judge in 1815 / 1915 should be examined

9.8.

2nd counsaker

7/6/12

NOTE.—Contn. sheet.

GBB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat. File No. / of 191

Serial No.

99 I do not see my way to vote with the 1st Cr. for purpose of deciding the disposal of the Kolar gold in my opinion if it is proved that the property belongs to one or another of the mines these companies have been interested in common in many respects. Mostly one of them. When we are certain that a certain piece of gold is Kolar gold fields gold and when the several companies are agreed ~~[illegible]~~ that the claim may be decided effectively in their behalf I do not see how he can claim it as unclaimed property. I am inclined to agree with the

NOTE—Contn. sheet.

GBB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat. | File No. | of 191

Serial No.

Opinion of the Hon'ble Sivasami Iyer and Law unable to consider the just demand of the Chief court in question as premature.

8/6/12

1678
9.6.12

1st Dewan

8/6/12

1st Submitted at Council meeting,

1st Approved

Connected

Note for being submitted at next meeting of the Council

16/6

16/6 Case not considered at the meeting held on the 16th August & another hearing to be awaited pending the result of the appeal when the Govt advocate has been heard

NOTE.—Contn. sheet.

GHB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 16 of 1910-11

Serial No.

file before the Chief Court in a similar case decided by Mr Nahani

23
19/8/12

17/8/12

Subd. The Full Bench decision in the other case has been received and is put up in the linked file (Legis 50-1911).

(Sd) [illegible] With reference to para 102.

7/8/13
1st Consultation

Drawing Clerk
9/8

Extract from order on linked file Legis 50-11
"The linked file may be subd. separately for orders"

D. M. N
(Init) ~~H Hinde~~
15/8/13

Submitted: The other file Legis 50-11 is also put up ~~is also put up~~ contains the recent order of the Chief Court in Full Bench on the question ~~the~~ that assuming that the stolen ~~mining material~~ quartz was obtained from some mine in K.G.F. whether in the absence of proof as to the particular mine from which the quartz was

NOTE.—Contn. sheet.

GDB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 16 of 1910-11

Serial No.

removed, the respondents can sustain a joint claim to have the sponge gold handed over to them or to their common nominee

24/8/13

106 With regd to the Council resolution dt 16-8-12.

Submitted & further order

1st Consulen)

25/8 Drug & Rev

107 My note of 6/6/12 (P.35) Contains my view. The file may be submitted to Dewan & Council or placed at a meeting if necessary

31/8/13

Dewan)

5073 5-9-13

Drug & Rev 1/9

110 Please bring up at a meeting of Council

Secy 19.9.13. RG

Consulen & Legis

111 2nd Council & re for meeting

Secy 24/10/13

GPB—20,000—20-9-12

(5) 40

G. R. S. 12]

General and Revenue Secretariat. | File No. of 191

Serial No.

112 Brought up at the meeting on the 1st December 1913, but not taken up for want of time.

NOTE.—Contn. sheet.

GDB—20,000—20-1-12

GPB—1,000—19-7-13

41

Extract from the Proceedings of the 312th Meeting of the Council of His Highness the Maharaja, held at Bangalore on the 4th February 1914.

11. Subject.-(Clause ii of the Schedule).

3 Question of framing a legislative enactment to declare that all sponge gold produced before a Criminal Court and not specifically proved to belong to any particular individual, is the property of the State.

Opinion of the Council.

14 The question may be dropped for the present.

Sd/- M. Visvesvaraya.
Dewan of Mysore.

"E x t r a c t"

Secretary to Government.

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 16 of 1910-11

Serial No.

11 Entries in connected proceedings as attached.

~~Put up~~ no further action is called for in his case. His papers will now be filed if approved.

2nd member / Dewan

23 13/2.

13/2/14

7643 14-2-14

16 I agree.

19.2.14.

23 24/2

NOTE.—Contn. sheet.

GPB—60,000—7-11-13

Legn 16-11-1

1

No. A
Enc: 2

District Magistrate's Office,
Kolar District,
Dated Kolar, 5th November 1910.

6

From

C. Srikantesvara Aiyar, Esqr., B.A. B.L.,
District Magistrate, Kolar District.

To

C. S. Balasundaram Iyer, Esqr., B.A.,
Offg. Secretary to the Govt. of H.H. the Maharaja
of Mysore, General & Revenue Departments.

Sir,

I have the honour to submit for the information of Government that one Baboo Sab was convicted, on 12th April 1910, by the Special Magistrate, Kolar Gold Fields, for being in possession of unwrought gold weighing 6.83 ozs and valued at Rs. 340/-, and that on 13th June 1910 a petition was presented to the said Magistrate signed by the Superintendents of the Mysore, Champion, Oorcgum, Nandidrug and Balaghat Mines, alleging that the gold seized from the possession of Baboo Sab was the produce of one of the Mines represented by them and that therefore the gold might be made over to the Secretary to the Kolar Gold Fields Mining Board who represented their collective interests. The petition was rejected by the Magistrate on the ground that the Secretary to the Mining Board had no locus standi and that no one of the individual petitioners was in a position to prove that the gold ordered to be confiscated to Government was the produce any particular mine represented by him. A revision petition against this order having been filed in the Chief Court by the said Superintendents, the case has been remanded[x] to the Special Magistrate for enquiry into the ownership of the gold, if any,

[x] Vide copy of order enclosed for reference.

2

and disposal, and aluinde the Chief Court observe that

"the mere fact that they may not be in a position to prove that the gold was the produce of any particular mine will not in our opinion be ne-cessarily fatal to the claim. If it is proved to the satisfaction of the Magistrate that the gold was the produce of some one or other of the five mines represented, then not-with-standing the fact that the particular mine from which it was obtained cannot be specified, the Magistrate would, we think, be justified in making over the gold to the Secretary of the Mining Board who is admittedly the common agent of all the petitioners.

We note that the order of the Magistrate purports to have been made under sections 523 and 524 of the Code of Criminal Procedure, but these sections do not relate to the disposal of property which has been the subject of a criminal trial, because that is a matter which should be dealt with under section 517. The powers of a Criminal Court under that section are very wide. The Court is to make such order as it thinks fit for the disposal of the property. If the Court is satisfied that the property belongs jointly to two claimants or severally to one of ~~xix~~ two claimants and if the claimants are agreed that it may be made over to them, we see no reason why the agreement should not be given effect to. If the petitioners in the present case have a remedy by suit against the Government, a matter in regard to which we refrain from expressing our opinion, (Cf. Secretary of State VS Venkhatasanyji Meghrajji I.L.R. XIX Bom. 668) no objection to the frame of the suit could be raised on the ground of misjoinder."

2. In pursuance of such Order of the Chief Court, the claim has been reposted and will be heard by the Special

3

Magistrate on the 21st November 1910.

3. There are at the Kolar Gold Fields, besides the following five Companies represented by the Mining Board - (1) Mysore Gold Mining Company, (2) Coregum Gold Mining Company, (3) Nandidrug Gold Mining Company, (4) Champion Reef Gold Mining Company, and (5) Balaghat Gold Mining Company - at least ten other marginally noted Companies and the Mining Expert that may be examined by the Mining Board for showing that the gold in question is the produce of one of the five Mines represented by them will have to be carefully and intelligently cross examined as to any special or peculiar characteristics distinguishing the gold of each of the five Companies who have joined the Board from those of the other ten Companies, or from gold from any other parts or sources whatsoever. For, the gold in question can be the produce of one of the Companies not represented by the Board, or if it were not possible to say of which of these fifteen Companies the gold in dispute is the produce, the Mining Board will not be entitled to it. (Vide Order of the Chief Court in Criminal Revision Petition No. 158 of 1904-05, copy enclosed).

1. Mysore Reefs Gold Mining Co
2. Kempinkote Gold Mining Co
3. Kolar Central Gold Mining Co
4. South East Mysore Gold Mining Co
5. Nine Reefs Gold Mining Co
6. Oriental Gold Mining Co
7. Road Block Gold Mining Co
8. Coromandel Gold Mining Co
9. Mysore West & Mysore Wynaad Gold Mining Co
10. Gold Fields of Mysore Co

4. Gold is now found not only in the Kolar Gold Fields but in several parts of India, including the neighbouring Dharwar and Anantapur Mines, and gold is besides largely imported from elsewhere for trade in the busy Taluk of Bowringpet. The Mining Board's Expert will therefore have to be examined how far and in what respects, if any, the gold in dispute differs from other gold, and it may also be necessary to examine our own State Geologist on the subject and perhaps also let in other evidence to rebut that of the Mining

4

Board. In fact the cross examination will have to be conducted with great care on the lines laid down by the Madras High Court in the Judgment passed by them in "The Public Prosecutor VS Obala Reddi " (Criminal Appeal No. 414 of 1905, printed at page cviii of the October volume of the Mysore Government Proceedings of 1906).

5. Further, the observations referred to above, of the Chief Court would seem to run counter to their own previous pronouncements on the subject and of the Government Orders on the same and the long standing practice in the matter.

6. Under these circumstances, the importance of the question and the principles involved and the difficult points of law and fact to be decided render it necessary that the case should be handled by the Government Advocate, and I have the honour, therefore, to request that you may be so good as to instruct the Government Advocate to appear in the Special Magistrate's Court on the 21st November 1910, on behalf of the Government, and to oppose the claim of the petitioners.

7. I am forwarding a copy of this letter to the Government Advocate, to save time, with a request to prepare himself to conduct the case on receipt of orders from Government.

I have the honor to be,

Sir,

Your most obedient servant,

Sd/ Kanthavarajaya

District Magistrate.

Lgi 16-10-1 5

In the Chief Court of Mysore, at Bangalore.

Friday the 2nd day of September 1910.

Present - Mr. Justice Stanley Ismay, C.S.I., Chief Judge,

and

Mr. Justice P. S. Krishna Rao, R.B.

Criminal Revision Petition No. 11 of 1910-11.

1. W. Pritchard
2. H. J. Gifford
3. R. H. P. Bullen
4. C. H. Richards
5. H. M. A. Cooke

Petitioners - Claimants

(By Mr. C. Krishna Murti)

VS

Government of Mysore — Opponent - Opponent

(By Mr. S. Narayana Rao)

Petition praying that the order of the Assistant Commissioner and 1st Class Magistrate, Kolar Gold Fields, in Criminal Mis. Case No. 179 of 1909-10 may be revised.

This petition coming on for hearing on Monday the 29th day of August 1910, the Court pronounced the following

O R D E R.

The facts of the case are very simple. On the 12th April one Babu Sab was convicted by the 1st Class Magistrate of the Kolar Gold Fields under section 13 read with sections 6 and 12 of the Mysore Mines Regulation for being found in possession of unwrought gold weighing 6.83 ozs and valued at Rs. 340/-. An appeal preferred on behalf of the accused was dismissed by this Court on the 15th July.

Meanwhile on the 13th June a petition was presented to the Magistrate signed by the Superintendents of the Mysore, Champion Reef, Ooregum, Nandidrug and Balaghat Mines alleging that the gold seized from the possession of Babu Sab

was the produce of one of the Mines represented by the claimants and asking that on proof of this allegation the gold should be made over to the Secretary of the Kolar Gold Fields Mining Board who represented their collective interests. This petition was summarily rejected by the Magistrate on the ground that the Secretary of the Mining Board had no locus standi and that no one of the individual petitioners was in a position to prove that the gold recovered was the produce of the particular mine which he represents. It is against this summary order of rejection that the present application is presented.

We are of opinion that the order cannot be upheld, and that the petitioners should be allowed an opportunity of proving that the gold seized was the produce of one of the mines which they represent. The mere fact that they may not be in a position to prove that the gold was the produce of any particular mine will not in our opinion be necessarily fatal to the claim. If it is proved to the satisfaction of the Magistrate that the gold was the produce of some one or other of the five mines represented, then notwithstanding the fact that the particular mine from which it was obtained cannot be specified, the Magistrate would, we think, be justified in making over the gold to the Secretary of the Mining Board who is admittedly the common agent of all the petitioners.

We note that the order of the Magistrate purports to have been made under sections 523 and 524 of the Code of Criminal Procedure, but these sections do not relate to the disposal of property which has been the subject of a criminal trial, because that is a matter which should be dealt with under section 517. The powers of a Criminal Court under that section are very wide. The Court is to make such order as it

7

thinks fit for the disposal of the property. If the Court is satisfied that the property belongs jointly to two claimants or severally to one of two claimants and if the claimants are agreed that it may be made over to them, we see no reason why the agreement should not be given effect to. If the petitioners in the present case have a remedy by suit against Government, a matter in regard to which we refrain from expressing any opinion, (Cf Secretary of State VS Venkhatasanyji Meghrajji I.L.R.XIX Bom.668) no objection to the frame of the suit could be raised on the ground of misjoinder.

The order of the Magistrate summarily rejecting the petition is set aside and the Magistrate is directed to dispose of the petition on the merits.

Sd/ S. Ismay, Chief Judge

Sd/ P. S. Krishna Rao, Judge.

True Copy

Sd/ B. Basavaradhya

Dy. Registrar.

C o p y.

District Magistrate,

Kolar District.

mcl 5 Leg. 16-10-1

8

In the Chief Court of Mysore, at Bangalore.

Thursday the 20th day of July 1905.

Present - Mr. Justice A. E. Staley, Chief Judge,

and

Mr. Justice A. Rangaswami Iyengar, Judge.

Criminal Revision Case No. 158 of 1904-05.

In the matter of the order passed by the Assistant Commissioner and 1st Class Magistrate, Kolar Gold Fields, in Criminal Case No. 155 of 1904-05 directing the sponge gold seized from the accused (Sundaram) to be handed over to the Tank Block Mine.

Mr. C. Krishna Murti, Advocate, heard for the Tank Block Co.

Advocate Mr. S. Narayana Rao, for Government Advocate, heard for Government.

O R D E R.

All the evidence in this case is, that the sponge gold under enquiry was found on a man who had work on the Tank Block Mine, that its composition is consistent with its being Tank Block gold and inconsistent with its being gold of the adioining Mundydrug Mine. There is, however, no evidence that the possessor could not have obtained possession of gold of a mine or mines other than Mundydrug producing gold of a composition similar to that recovered. That being so we are unable to hold that the gold has been proved sufficiently to belong to the Tank Block Mine and it will be confiscated to Government.

A true copy.

Sd/ V.A.Rajaratna Mudaliar,

Registrar.

Copy of

District magistrate

G.R.S. 28]

3 Confidential

Legis **File No.** 16-10

Serial No. 2

Diary No. of letter replied to 1268

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Legis)

the 190

Date of issue 11-11-10

Signed by Sri S Srinivasamurthy

READ.—

Letter No A dated the 6th Nov 1910 from the District Magistrate, Kolar, requesting that for reasons stated Government may be pleased to direct the Govt. Advocate to appear on behalf of Govt. before the Special ~~Commissioner~~ Magistrate's Court, Kolar Gold Fields, and oppose the claim of the Superintendents of the Mysore, Champion, Oorgaum, Nandidroog and Balaghat Mines in regard to a piece of ground [illegible] ~~to be enclosed to Govt by Mr~~

over

Which is the Subject for enquiry by that

SUBJECT

MGCPB—20,000—24-2-05

10

Magisterial or Criminal Misc Case

No. 175 of 1909-10.

Order Sheet. J.# 1431-3 / Regis 16-10. 2 11-11-10

Enel 1 each to Dw. & Gt.

The case having come on revision before the Chief Court. Hath Court has remanded the case. to the Special Magistrate for enquiring into the ownership of the gold and disposal of the claim on ~~its~~ merits. As the observations contained in the order of the Chief Court in this Connection ~~are not cogent~~ can not be Easily reconciled with the ~~terms~~ there made by it on previous occasions and also ~~amendment~~ previous decisions of that Court and as they are also opposed to the former order on the subject and in view of the important principles involved, the former ~~order~~ case is remitted to appear before the Special Magistrate's Court, Kolar Gold Fields on the 4th February 1910 to which date the case has been posted for hearing and to visit the claim of the Superintendents of mines on behalf

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

of the Govt., ~~Special Officer~~ ~~has laid~~ the judgment of the Chief Court in criminal revision Case No. 158 of 14-05 and that similar cases may be brought to the notice of the Magistrates in this connection. A copy of the collection of printed papers on the subject of the claim ~~pref~~ of the Mining Board to the ~~Surface~~ rights preferred before the State Courts as ~~adverse~~ subject matter of ~~this~~ the offence is also forwarded to the Dt. Magte., Kolar ~~for the Inspector~~ for information and return when done with.

9/11/10

SW 8/11

Offg Secy to Govt. Genl & Secy to Govt

To

The Dist. Magistrate, Kolar with a copy of the compilation for kind return when done with

The Govt. Advocate in Mysore also with a copy of the above

The Comptroller, Mysore Govt.

11/11 Secy GW

12. 1614. 1910

Office of the Government Advocate in Mysore. 12

Bangalore, Dated 12th November 1910.

Legis 16 of 1910-11 serial 3

J 1361

From

The Government Advocate in Mysore.

To

The Secretary to the Government of H.H.
the Maharaja of Mysore, General and
Revenue Departments.

Sir,

With reference to Government Order No.J1431-3/Legis.16-10 dated yesterday, directing me to oppose the application of the agents of five of the Mining Companies on the Kolar Gold Fields, claiming the gold produced in a Criminal Case before the Special Magistrate of Kolar Gold Fields, I have the honor to state that in order to enable me to effectually cross examine the expert witnesses that may be examined by the other side, it is necessary for me to know exactly the characterestics etc, of the gold found in each of the Mines on the Kolar Gold Fields and those of the gold found in other Mines both within and outside --- Mysore with other technical matters connected therewith. I therefore request that Government will be pleased to ask the State Geologist or the Secretary in the Geological Department to give me necessary instructions in the case and to direct one of his Assistants to remain with me at the enquiry in the Magistrate's Court. As the matter is urgent, an early order is solicited.

I have the honor to be
Sir,
Your most obedient servant.

S. Narayana Rao

Government Advocate.

13

G.R.S. 26]

Legis File No. 16-10

Serial No. 4

19-11-10

Diary No. of letter replied to J 1305

No. J 1462/Legis 16-7

General and Revenue Secretariat
(Legis)
, *the* 19 .

To

The Secretary to Govt.
Judicial Dept. Bangalore

Date of issue 14-11-10

Signed by [illegible]

Sir,

I am directed to state that the Govt. Advocate has been asked to appear before the Special magistrate Court, K.G. Fields, in the 21st Instt. to oppose the claim of the agents of certain mining Companies, K.G. Fields, in regard to a piece of gold produced before that Special magistrate Court as subject of an offence and claimed by the agents as belonging to one of the Companies. The Govt. Advocate requires instructions as to the characteristics of the gold found in each of the mines in the K.G. Fields and those found in the mines both within and outside Mysore and on other technical

over.

SUBJECT.

nov/4/11

14

Mallow Connected Murder

I am directed to request you to be so good as to arrange to give him the necessary instructions in the matter and to direct one of your Assistants to remain with him at the inquiry in the Petty Sessions Court at Kilmallock this day week in the event of a remand.

J 14639 14-11-10. Mr Supt Leg to get Copy to the Irish Advocate in Rome. for information

W. Wood

List of enclosures,

Copied by

Examined by

GPB—20,000—12-6-10

Office of the Government Advocate in Mysore,
Bangalore dated, 17th March 1911.

From,

The Government Advocate in Mysore,
Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja
of Mysore, General and Revenue Departments.

Sir,

With reference to the Proceedings of Government No. J 1431-3/Legis 16-10 dated 11th November 1910 directing me to oppose the claim of the five Mining Companies in Mis: - case No.179 of 1909-10 on the file of the Special Magistrate of Kolar Gold Fields to the gold produced in criminal case No.676 of 1909-10 on the file of the said Magistrate, I -- have the honour to state as follows:-

1. One Babu Saib was convicted by the Special Magistrate (in criminal case No.676 of 1909-10- of being in possessior of unwrought gold (which was said to be badly melted sponge gold) and the conviction was confirmed by the Chief Court in Criminal appeal case No.119 of 1909-10.

2. The Superintendants of five Mining Companies (which are the only ones now carrying on mining operations in the Kolar Gold Fields) applied in Mis.No.179 of 1909-10 to the Magistrate for delivery to them or their common agent the said piece of gold on the ground that the same must have been stolen from one of their mines.

3. The Magistrate summarily dismissed the application on the ground that as the petitioners could not prove to which particular company the gold belonged. This order - was reversed by the Chief Court on the ground that the --- petitioners may prove that the gold belongs to some one or other of the five applicants though not to which particular one, and that they should be allowed to adduce evidence on

on the point. The case was sent back for a fresh decision with a suggestion that section 517 Criminal Procedure Code gives larger powers to the Magistrates.

4. On remand, the petitioners had to prove that the -- gold in question was the property of one or other of the 5 applicants or in other words that the gold could not have come from any other mine than those represented by the 5 petitioners. They examined five witnesses. The 1st witness was one Mr. Leslie. He assayed the gold in question and sent in a certificate that the bar caontained 905 parts of gold and 75 parts of silver and 20 parts of base metal, -- and that he was of opinion that the gold was of the Kolar Gold Field . Seeing that the certificate was not sufficient to establish the petitioners' title to the gold, the said witness was made to depose in Court (contrary to the certificate -- given by him) that he was of opinion that the gold was of Champion Reef Mine, and that the reason for this opinion -- was the proportion of gold to silver. He then produced a statement (Ext:B) showing the average proportion of gold to silver in the five mines represented by the petitioners and stated that this proved the gold to be of Champion Reef -- Mine. But this exhibit shows that the average proportion of gold to silver in the Champion Reef is 517 parts of gold and 72 parts of silver. Whereas the proportions of gold in question is 905 parts of gold and 75 of silver. Thus the evidence of this witness is, to say the least of it, -- is inconclusive and unreliable. The remaining four witnesses merely produced their accounts in support of Ext.B. It may, therefore, be fairly said that there is no legal - evidence in support of the finding of the Magistrate that the gold belongs to Champion Reef Mine.

5. As the evidence produced by the petitioners was --- found to be inconclusive on the point of ownership of the petitioners, the Deputy Commissioner and myself came to the conclusion that no evidence need be adduced on behalf of

of Government. Moreover the experts of the Govt Geological -- Department could not have given any evidence relevant to the case. On the other hand, judging from the evidence -- given by them in other cases, the other side might have got out some damaging admissions from them.

6. For these reasons I have the honour to submit that the case is a good one for preferring an appeal on behalf of Government to the Chief Court against the order of the Magistrate under section 520 Criminal Procedure Code or to move the Chief Court on the revision side. Should the Government approve of this course. early orders are solicited as the appeal or the revision petition will have to be filed witnin 60 days from the date of the order viz, the 8th of March 1911.

7. Unauthenticated copies of the order passed , the deposition of Mr. Leslie and exhibit B filed in the case - are enclosed for ready reference and kind return when no - longer required.

I have the honour to be,

Sir,

Your most obedient servant,

S. Narayana Rao

Government Advocate.

Legis 16 April 10-11
Legal Serial 6 2371 18

No. 7600/254

District Magistrate's Office,
Kolar District,
Dated Kolar, 16th March 1911.

From

C. Srikanteswara Aiyar, Esqr., B.A.B.L.,
District Magistrate, Kolar District.

To

C.S. Balasundara Iyer, Esqr., B.A.,
Offg: Secretary to the Govt: of H.H. the
Maharaja of Mysore, Genl.&.Rev. Departments.

Sir,

With reference to Government Proceedings No. J. 1611-37 Legis.16-10 dated 11th November 1910, anent the opposing, in the Special Magistrate's Court at Kolar Gold Fields, of the Mining Board's claim for certain gold seized from the possession of one Babu Sab in Criminal Case No.676 of 1909-10 on the file of that Court, I have the honor to submit that the Magistrate has admitted the claim as per his order dated 8th instant.

2. As the Magistrate has erred in admitting certain illegal evidence and drawn his conclusions on inferences not warranted by facts on record, his decision is both arbitrary and perverse, and I have accordingly submitted the whole of the records under Section 438 of the Criminal Procedure Code to the Chief Court for revision, as per my proceedings of to-day, copy of which with copies of the Magistrate's Order notes of evidence, and exhibits filed in the case are herewith submitted for the information of Government. I have also requested the Government Advocate to appear before the Chief Court on behalf of Government and argue the case for revision.

3. The case is also, for the full reasons I have set

19

forth at length in my order of reference to Chief Court, a fit one for appeal by Government under Section 520 of the Criminal Procedure Code.

4. I have therefore the honor to request that you may be so good as to obtain the orders of Government and issue such further orders as they may deem fit to ~~issue~~ pass to Government Advocate, either to appear on the revision side, or to prefer an appeal against the order of the Special Magistrate herein referred to, before a Division Bench , or Full Bench, if need be, in view of the great importance of and principles involved in the case.

5. I am sending a copy of this letter to the Government Advocate, (to save time) for information and being prepared to receive the orders of Government in the matter.

I have the honor to be,

Sir,

Your most obedient servant,

C. Sankaranarayana

District Magistrate,

Kolar District.

Encl to Legis 16-10-6

"W

MINING BOARD'S CLAIM FOR RETURN OF CERTAIN GOLD.

I n d e x.

1. Proceedings of District Magistrate, dated 10th March 1911.
2. Proceedings of District Magistrate, dated 10th March 1911.
3. Order of 1st class Magistrate, Kolar Gold Fields, in Criminal Miscellaneous No. 179 of 1909-10.
4. Evidence of Mr. H. M. Leslie.
5. ---Do--- of Mr. W. Pritchard.
6. ---Do--- of Mr. J. Perrow.
7. ---Do--- of Mr. F. L. Wilkins.
8. ---Do--- of Mr. L. C. Carlton.
9. Exhibit A.
10. Exhibit B.
11. Exhibit C.

PROCEEDINGS OF THE DISTRICT MAGISTRATE, KOLAR DISTRICT.

This 16th day of March 1911.

Present:- C.Srikanteswara Aiyar, Esqr., B.A.B.L.,

District Magistrate.

R E A D :-

(1) Proceedings of the District Magistrate, dated 10th March 1911, passed upon reading copy of order in Criminal Miscellaneous Case No.179 of 1909-10, on the file of the Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields, (Petitioners - W. Pritchard and 4 others VS. Counter Petitioner - Government of Mysore) directing the Magistrate to withhold the return of the gold in question to the Kolar Gold Fields Mining Board, and to submit the records of the case for perusal.

(2) Records in the case received with the Magistrate's docket No. 8Ab dated the 13th instant.

---oOoOo---

One Babu Sab was found melting a piece of gold weighing 6.83 ozs. valued at Rs.340/- at about 8.30 or 9 P.M. on 6th March 1910 in a house at Bowringpet, and was tried and convicted on 12th April 1910, by the 1st class Magistrate of Kolar Gold Fields, for being in possession of gold under Section 19 read with Sections 5 and 12 of the Mysore Mines Regulation. An appeal preferred by the accused was dismissed by the Chief Court on 15th July 1910.

2. Meanwhile, a petition was presented to the Magistrate on 13th June 1910 signed by the Superintendents of Mysore, Champion Reef, Oregaum, Nandidroog and Balaghat Mines, alleging that the gold seized from Babu Sab was the produce of one o the 5 Mines represented by the claimants and that on proof thereof the gold should be made over to the Secretary to the Kolar Gold Field Mining Board. This petition was summarily rejected by the

Magistrate for the reason that the "Mining Board had no locus standi in the matter at all, and that as none of the Mining Companies could definitely claim the gold to be theirs, none of them could succeed in claiming it or establish a satisfactory claim".

3. The petitioners applied to the Chief Court to revise this summary order of rejection, which was set aside on the ground "that the petitioners should be allowed an opportunity of proving that the gold seized was the produce of one of the Mines which they represent", and the Magistrate was directed "to dispose of the petition on the merits". While so remanding it, the Chief Court had observed aliunde (the misconception of the import whereof, on the part of the Magistrate, will be referred to presently) that "the mere fact that they may not be in a position to prove that the gold was the produce of any particular Mine will not in our opinion be necessarily fatal to the claim. If it is proved to the satisfaction of the Magistrate that the gold was the produce of some one or the other of the five Mines represented then notwithstanding the fact that the particular Mine from which it was obtained cannot be specified, the Magistrate would, we think, be justified in making over the gold to the Secretary of the Mining Board, who is admittedly the common agent of all the petitioners", and had further explained it by adding that "if the Court is satisfied that the property belongs jointly to two claimants, or severally to one of the two claimants, and if the claimants are agreed that it may be made over to them, we see no reason why the agreement should not be given effect to".

4. The Magistrate posted the case to 21st November 1910, for re-hearing and then to 15th December 1910, when as the petitioners were not prepared to adduce their evidence - which by the way be it noted, they should have had ready in June last, at the time of preferring their claim - adjourned it sine die to

enable Mr. H. M. Leslie, their Metallurgical Engineer to make a detailed analysis of the gold in question. The matter finally came on for hearing on 1st March 1911 when Mr. Leslie was examined as the first or only principal witness for the petitioners, Mr. S.Narayana Rao, Government Advocate, appearing on behalf of Government.

5. The case had been specially adjourned sine die, to enable the petitioners to have a detailed analysis of the gold made, which, however, was not done for the reason, as deposed to by Mr. Leslie, that " a complete analysis is a very difficult matter " requiring too long a time and " particular skill " and that he was "not in the habit of doing so". He had merely assayed the gold and certified that from the result obtained that the composition of the gold was

905 parts of gold
75 parts of silver
20 parts of base metal,

he was of opinion that the gold had "come from the Kolar Gold Field"- vide Exhibit A dated 28th November 1910.

6. Since then, for the purpose of giving further evidence on this subject, he had collected certain statistics regarding several averages of the proportions of gold and silver found in various assays (not analyses) said to have been made, during the twelve months of the year 1910, by the respective Assay Officers of these 5 Mines, of the gold produced on those different Mines and prepared a list Exhibit B, (which will be adverted to hereafter) striking the averages for each Mine from the figures supplied by them to him for the occasion, and had come to the conclusion by a comparision with such averages that the gold in question was not only Kolar Gold but had come " from Champion Reef Mine ". His evidence on the point in Examination-in-Chief is as follows:-

" Exhibit A is my certficate. My opinion is that it is Kolar Gold and comes from Champion Reef Mine. I base my opinion on the proportion of silver to gold. I have tested all the gold

of the working Mines on the Field. .....

it is a very noticeable point that the gold in the different Mines here is quite distinct, one from the other in the proportion of gold and silver. These distinctions have existed as far as my experience goes here for the length of time I have been here". In cross-examination he began by asserting that assaying was the same as analysis and that it was wrong to say that they were different, and after being led to admit the difference, he continued " I have examined the gold of 6 Mines on the Field. I have assayed it, not made a complete analysis of it. The proportion of gold to silver in Champion Mine is always the same to within 1 or 2 parts in a 1000. Whenever the proportion 90% of Gold and 7% of silver was found, I could not always say it was Champion gold. I have the average of the assays of the gold produced on the different Mines and I base my conclusions on these averages and the test. I have made an average in the last twelve months since this claim was made. I took the figures of each Mine and struck the average. The figures were recorded by the Superintendent of each Mine..... I have assayed gold from Champion Reef a dozen times, just to find the proportion of gold and silver. It is not always the same. I have no record of these assays. I cannot say the exact proportion on each of these occasions"; and when asked about the gold which is the subject matter of this claim, the witness concluded " I cannot assert positively that this gold is from Champion Reef and from no where else".

7. After such clear retraction of his oracular assertion made in examination - in - chief that this gold was Solar gold and came from Champion Reef Mine, Mr. Leslie was questioned about some of the other adjoining Mines not represented by the petitioners, and he deposed " I have assayed gold from Rymers West and Rymers Wynad otherwise known as Tank Block. These worked till 1907-1908, I have only assayed their cyanide gold. I can't

25

say the proportion of gold and silver in that Mine. The Coromandal Mine stopped milling about 6 years ago. I have not assayed any gold from that Mine. I have not assayed Nine Reef gold. I have not assayed gold from East Byatarayaswami Mine. All these Mines adjoin each other".

8. These emphatic admissions of Mr. Leslie that he "cannot assert positively that the gold in question is from Champion Reefs and from no where else" and that he had not assayed gold from so many Mines, other than those of the claiments, quite close to and adjoining each other, had quite settled the facts against the petitioners' claim, when it was, in Re-examination it was sought to call upon him to file the list, Exhibit B, already referred to, to which the Government Advocate naturally objected, as being inadmissible and opposed to all elementary principles of Rules of Evidence. Mr. Leslie had been expressly cited to give expert evidence on what he had himself analysed or assayed, and he had spoken of the results of his own experiments - of some of which he had no recollection, of others he had no record and in particular, of the assay of the gold in question. For the rest, even notes or the original records made by the assayers of the results of their assays are not admissible, much less copies of such records or figures of averages worked out therefrom, more especially when the compilation is of various averages of several samples of gold assayed by different individuals on different Mines at different times and recorded, not invariably, by the Assaying Officers, but by somebody else as mentioned by Mr.Leslie. The Assayers themselves must have been examined. But no such persons were produced or examined. Exhibit B, therefore, was no legal evidence of what the averages of the proportion of gold and silver were of the gold produced from those 5 Mines. Nevertheless the Magistrate allowed it to be put in for the petitioners under a misconception that, because the Government Advocate had started the question of averages in his cross examination of the witness,

which obviously was for the purpose of eliciting information as to how he came to form his opinion on the subject, it was admissible in re-examination to allow anything which was not only no legal evidence for reasons already stated, but the object of admitting which was not so much to clear or explain what had transpired in cross-examination, as to establish the averages of the Mines, which had to be done otherwise.

9. And in as much as this Exhibit B was no legal evidence, the case was further adjourned to the 4th March 1911 expressly for calling in evidence to prove the results of assays made of the gold produced on the respective Mines, when the witnesses examined were (1) Mr. W.Pritchard, Assistant Superintendent of the Mysore Mine (one of the five signatories to the petition), (2) Mr. J.Perrow, Reduction Officer, Balaghat Mine, (3) Mr. F.L. Wilkins, Cashier, Champion Reef Mine, and (4) Mr. R.C. Carlton, Accountant, Nandidrug Mine. No witness was examined for the Ooregaum Mine nor did any of the other petitioners, the Superintendents of the other four Mines, go into the witness box. An Exhibit C purporting to be the list of averages for Nandidrug Mine was filed. The admission of this Exhibit was equally irregular, for the same reasons as in the case of Exhibit B, and it was much more valueless after Mr. Carlton's (5th witness) inability to say whether the Bullion Book, from which the figures in Exhibit C had been copied, "was correctly written or not". On this very account, the Bullion Book of this or of any other Company was inadmissible and no legal evidence, unless proved under ordinary rules of evidence, which was not done.

10. The evidence of the four witnesses examined shewed merely that the Reduction Officer of each Mine assayed (not analysed) samples of gold produced in his Mine and from the results of his several assays, he struck the averages of the proportion of gold to silver on each occasion and had the figures so

worked out, entered in each Mine Register, from which the averages of the twelve months sent to Mr. Leslie were prepared, not invariably by the Reduction Officer but by somebody else as the witnesses, such as Accountant, Cashier &c, who were themselves unacquainted with the assays. No Reduction Officer, except Mr. Perrow of Balaghat Mine whose evidence, however, did not contain anything on the point, was examined and no result of any individual assay tendered to show whether any gold of any of the five Mines which had been analysed or assayed was similar to the gold in question (which Mr. Leslie first certified as having "come from the Kolar Gold Field" then in examination - in - chief asserted to be Champion Reef gold, later on in cross-examination admitted he "could not assert positively that this gold was from Champion Reef and from no where else" and it "could have come from one of the Mines on the Field", even which finally he was not sure of) or whether the gold claimed, belonged to Champion Reef Mine or to any one of the other four Mines referred to in the petition.

11. In spite of no such evidence forthcoming, the Magistrate has held that the gold is Kolar gold coming from Champion Reef Mine. The chief of his reasons, is, not that it has been conclusively proved to be so by the evidence adduced on behalf of the petitioners, but because Mr. G.Weeks, the Chief Reduction Officer of the Champion Reef Mine, who had been examined at the trial of Babu Sab, had stated that a piece of sponge gold was adhering to the bar gold seized from the accused. Mr.Weeks himself was not examined for the petitioners nor subjected to any cross-examination and his former statement in another proceedings, inadmissible as it is in this case, was as follows:-

" It is half melted gold. There is one piece of sponge gold almost melted. The whole of it appears to have been at melting point..... With the exception of the piece of sponge, the rest is unwrought gold..... With the exception of the dust

it was all in one lump..... The whole of the gold was one lump including the bit of sponge gold..... The heat had not quite reached the sponge gold to change it into melted gold. It was not a separate piece." This statement was not tendered or referred to at the hearing of this claim, nor was it marked as any Exhibit, and is like exhibit B equally inadmissible. It is also irrelevant in as much as there is absolutely nothing in it to show from which Mine, if any at all, the sponge gold could have come. To have concluded therefrom that the sponge gold was either "Kolar gold" or to have "come from any one or ... other of these five Mines only", is merely arguing in a circle. In referring to sponge gold from California or South Africa, Mr. Bowring evidently clean lost sight of the so many other Mines on the Field, just very close to and adjoining each other, which have been till recently, and some of which are still in different stages of working-e.g. East Byatarayaswami Block - and so much nearer Bowringpet where Babu Sab had been caught, and wherein, as well known to all, gold quartz, gold sand &c, are available and from which, or as stated by Mr. Leslie himself, <u>from any one of the Mines on the Field</u>, the gold in question might have come.

12. Further, Exhibit B itself nowhere shows that the proportion of gold and silver 906 to 76 in 1000 parts found by Mr. Leslie to be the assay result of the gold in question, is characteristic of the Champion Reef gold, whose proportion is set down as varying from 916.7 to 918.5 gold and 71.7 to 76.4 silver for the 12 months of the year and 917.283 gold to 72.95 silver for the whole year, or of any of the other 4 Mines therein referred to; nor does Mr. Weeks touch upon what Mine, if any, the sponge gold could have come from. On the face of such evidence on record, the Magistrate has not exercised his powers of discretion, vested under Section 517 of the Criminal Procedure Code, <u>judicially</u>, i.e. according to sound principles of Law, but has apparently come to an arbitrary conclusion in holding that he is

"satisfied that the gold is Kolar gold" and "it must belong to the Champion Reef Mine", the validity of which finding he would himself seem to doubt, as is obvious from his own later observation "whether the evidence regarding the averages is believed or not", the gold "must be the produce of some one or other of the five Mines represented" which, as already pointed out, only quite ignores the presence of so many other Mines close by and adjoining each other.

13. Having thus erred in admitting evidence not legally admissible and acted upon it, and drawn inferences not warranted by facts and thereby come to a wrong conclusion, the Magistrate in directing the delivery of the gold in question to the petitioners, has further misunderstood and misapplied the observations of the Chief Court referred to in para 3 supra; for while all that the learned Jusges therein indicated was, that the gold might be delivered to the petitioners if it was proved to be "the produce of some one or other of the five Mines represented" or, as they themselves explained, to belong "jointly to two claimants or severally to one of two claimants", the Magistrate has ordered its delivery to the petitioners, though none of them has established his right to it.

The Magistrate lays stress on the point that the gold found with Babu Sab was sponge gold, but it was equally so, in Criminal Revision Case No.158 of 1904-05 on the file of the Chief Court, in which in spite of its being a much stronger case than the present one, (for while the small piece of sponge gold adhering to a mass of gold in the present instance was found with Babu Sab a jutka driver totally unconnected with any of the Mines represented by the petitioners, the gold which was wholly sponge gold, in the said Criminal Revision Case No.158, was found with a man who was a mill engine cleaner on the Tank Block Mine itself by which Company it was claimed) Mr. Justice Staley, Chief Judge and Mr. Justice Rangaswami Iyengar, passed the following Order:-

"All the evidence in this case is that the sponge gold

under enquiry was found on a man who had work on the Tank Block Mine, that its composition is consistent with its being Tank Block gold and inconsistent with its being gold of the adjoining Nandidrug Mine. There is, however, no evidence, that the possessor could not have obtained possession of gold of a Mine or Mines other than Nandidrug, producing gold of a composition similar to that recovered. That being so, we are unable to hold that the gold has been proved sufficiently to belong to the Tank Block Mine and it will be confiscated to Government".

14. The Magistrate should have followed this decision of the Chief Court and also that of the Madras High Court in Criminal Appeal No.414 of 1905 (The Public Prosecutor Vs. Obala Reddi) and disallowed the claim of the petitioners, on the ground that there is no evidence that the possessor of the gold or sponge gold in question could not have obtained possession of it from any Mine or Mines other than those represented by the petitioners, and from any of which , though they may not all be now working in the sense they are not extracting large quantities of gold for shipment to London, gold quartz, gold sand in abundance etc., can be had when the people in those parts are such great adepts in pounding, amalgumating and retorting over small charcoal fires as spoken to by Mr. Leslie and reducing to sponge gold and eventually to gold by application of more heat, - let alone the further Californian or South African gold or gold from any where else.

15. The order of the Magistrate being improper, illegal and untenable, the entire records in the case will be submitted to the Chief Court under Section 438, Criminal Procedure Code, for such orders as they may deem fit to pass.

S/ C. Srikantaiyanadiyar

District Magistrate,
Kolar District.

No 7599
253.

31

Copy submitted to the Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Departments.

District Magistrate,
Kolar District.

PROCEEDINGS OF THE DISTRICT MAGISTRATE, KOLAR DISTRICT.

This 10th day of March 1913.

Present: C. Srikanteswara Aiyar. Esq. B.A.,B.L.,
District Magistrate.

Read:-

Copy of order in Criminal Miscellaneous Case No. 179 of 1909-10, on the file of the Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields, (Petitioners - W. Pritchard and 4 others. Vs. Counter petitioner - Government of Mysore.) in re the petitioners' claim to certain gold that was confiscated to Government.

The Special Magistrate has evidently surrendered his legal discretion and misunderstood the Chief Court's casual observations, and in spite of the facts not being conclusively established by the evidence commented upon by himself, has based his decision upon his erroneous notion of what he considers to be the Chief Court's holding. He is requested to stay the return of the gold to the Mining Board, until further orders, and submit the whole of the records to the undersigned as early as possible.

(Sd) C. Srikanteswara Aiyar.
District Magistrate,
Kolar District.

IN THE COURT OF THE ASSISTANT COMMISSIONER AND 1st CLASS MAGISTRATE, KOLAR GOLD FIELDS.

DATED THE 8th DAY OF MARCH 1911.

Present: P. F. Bowring, Esquire., 1st class Magistrate.

Criminal Miscellaneous Case No.179 of 1909-10.

PETITIONERS		OPPONENTS
1. W. Pritchard		
2. H. J. Gifford		Government
3. R. H. P. Bullen	VS	of
4. C. H. Richards		Mysore.
5. H. M. A. Cooke		

Petition under Section 517 of Criminal Procedure Code.

The following witnesses were examined on behalf of the petitioners.

1. Mr. H.M. Leslie, MetallMrgical Engineer, Marikuppam.
2. ,, W. Pritchard, Assistant Superintendent of Mysore Mine.
3. ,, J. Perrow , Reduction Officer, Balaghat.
4. ,, F.L. Wilkins, Cashier, Champion Reef.
5. ,, R.C. Carlton, Accountant, Nandidroog.

The following exhibits were filed on behalf of the petitioners.

Exhibit A Certificate granted by Mr.Leslie

,, B A list of averages for the 5 mines on the Kolar Gold Field for 12 months ending December 1910.

,, C Table of average assay values produced by 5th witness from the Nandidroog Company.

Petitioners were represented by Mr. Shama Rao, 1st grade Pleader

Mr. S. Narayana Rao, Government Advocate appeared on behalf of Government.

The Court pronounced the following:-

O R D E R.

This is a case in which W. Pritchard and four others, on behalf of the Mining Board, claim the gold that was confiscated to Government when Baboo Sahib was convicted by this Court for being in possession of gold under sections 9,12, and 13 of the Mysore Mines Regulation. The claim is opposed by the Mysore Government.

The facts leading up to the present state of affairs are as follows:- On the 24th April 1910 Babu Sahib was convicted under the above mentioned sections of the Mysore Mines Regulation & was sentenced to 12 months' imprisonment. He had been caught red handed melting the gold which is valued at Rs 340/- at about 8.30 or 9.P.M. in a house in Bowringpet. The gold was ordered to be at the disposal of Government if not claimed within 6 months. On the 13th June 1910 the five claimants put in a claim for the gold on the ground that as it was Kolar Mine gold, it belonged to one of them & that the Mining Board represented the common interests of all the claimants.

This application was rejected by this Court on the grounds that the Mining Board has no "locus standi" in the matter, and as none of the Mining Companies could definitely claim the gold to be theirs, none of them could succeed in claiming it or establish a satisfactory claim.

The petitioners appealed to the Chief Court against this order and it was set aside on the grounds that it was a summary order and the petitioners should be given a chance of proving that the gold seized was the produce of one of the mines which they represent.

The Chief Court held that if it was proved to the satisfaction of the Magistrate that the gold was the produce of one or other of the five mines represented then, notwithstanding the fact that the particular mine from which it was obtained cannot be specified the Magistrate would be justified in making over the gold to the

35

Secretary of the Mining Board who is admittedly the common agent of all the petitioners.

The matter was again posted for hearing Mr. Shama Rao representing the 5 petitioners and Mr. Narayana Rao, the Government Advocate, opposing on behalf of Government.

Five witnesses have been examined for the petitioners.

It appears to me that there is only one point to be decided in this matter and that is, is there legal evidence to prove that the gold belongs to one of the Mining Companies on the Field.

This Court threw out the claim at first because it was held, amongst other things, that no one Company could say the gold was their's but the Chief Court do not agree with this view.

It is at once clear from what is on the record, that the gold is Kolar Mine Gold, but from which mine it comes may be discussed later on.

I am satisfied that the gold is Kolar gold for the following reasons. Mr. Weeks, the Chief Reduction Officer of the Champion Reef Mine was examined in Babu Sahib's case. He deposed as follows:-

> " It is half melted gold. There is one piece of sponge gold almost melted. The whole of it appears to have been at melting point. With the exception of the piece of sponge the rest is unwrought gold ..... with the exception of the dust it was all in one lump ..... The whole of the gold was one lump including the sponge gold. The heat had not quite reached the sponge gold to change it into melted gold. It was not a separate piece."

Now, it is quite obvious from the testimony of Mr. Weeks that what jutka driver Babu Sahib was melting surreptiously at night over a charcoal fire was nothing more or less than a piece of sponge gold and that he was interrupted just as it had reached melting point and before all the sponge had quite been melted.

I dont suppose anyone would seriously contend that the jutka driver had obtained a piece of sponge gold from California or

South Africa or elsewhere and was taking the trouble to melt it at Bowringpet, within a few miles of these Mines.

For this reason I say I am perfectly satisfied that the gold is Kolar Mine gold. Now, to what Mine does it belong ? Mr.Leslie, Metallurgical Engineer on the Kolar Gold Fields, has deposed that he assayed a piece of this gold and its composition was as follows:-

905 parts gold
75 parts silver
20 parts base metal

He has given a certificate Exhibit A. to this effect. He states that in his opinion it is Kolar gold and comes from Champion Reef Mine. He bases his opinion on the proportion of silver found in the gold.

The proportions Mr. Leslie states vary on all the Mines of Kolar Field, and also on all other mines whether they are close together or not. Mr. Leslie was cross examined at great length by Mr. Narayana Rao as to how he came by his opinion and he stated that he had the average of the assays of the gold produced on the different mines and he bases his conclusions from these averages and the test.
He took the figures of each mine for 12 months and struck an average.

The average of Champion Reef gold is 917.283 gold 72.95 silver.

In re-examination Mr. Leslie produced exhibt B a list of averages for the five mines on the Field for 12 months ending December 1910.

Mr. Narayana Rao objected to this being filed as an exhibit although it was he who started the question of averages in his cross examination.

However the case was adjourned for a couple of days and 4 more witnesses were examined, 3 of whom brought their bullion books, which were compared with the averages shown in exhibit B and were found to be correct.

37

From an examination of Exhibit B, it will be found that the Mysore, Oorgaum and Nandidroog and Balaghat Mines shew quite a different average of silver from Champion Reef Mine.

The Champion Reef average is practically the same as the assay of the gold found with Babu sab.

I have crefully considered all the arguments put forward by Mr. Narayana Rao the Government Advocate against the gold being handed over to the petitioners but I do not think he has made out a very strong case. The well known case of Obala Reddi Criminal appeal No.414 of 1905 in the Madras High Court is quoted, but the present case is quite different.

In Obala Reddi's case it was attempted to prove by the base metals in the gold analysed which had been seized far from here that it was Kolar gold, in this case I am of opinion that it was sponge gold that Babu Sab was melting which quite alters the complexion of affairs.

Added to this I see no reason whatever why the averages of gold and silver, which have been kept for years on different mines, and which have been spoken to by the witnesses should be dis-trusted.

From these averages it is clear that if the gold belongs to any of the mines, and there are only 5 who are producing gold here now, it must belong to the Champion Reef Mine, that it belongs to one of them is certain from the fact that it was sponge gold that was being melted, therefore whether the evidence regarding the averages is believed or not, the gold must be the produce of some of one or other of the 5 Mines represented.

This being so and the Chief Court having held that the Magistrate would be justified in making over the gold, I now order that the gold be returned to the petitioners under Section 517 of the Criminal Procedure Code.

(Sd) P.F. Bowring,
1st class Magistrate,
Kolar Gold Fields.

In the Court of the Senior Assistant Commissioner & 1st cl
Magistrate, Kolar Gold Fields.
Criminal Mis. Case No. 179 of 1909-10.

Deposition of H.M. Leslie, Metallurgical Engineer, Marikuppam.
1st Witness for Petitioners.

On Oath.

I assayed the gold that was sent to me from Court in connection with Criminal Mis. petition 179 of 1909-10. The composition of the gold is

905 parts of gold
75 ,, silver
20 ,, base metal.

Exhibit A is my certificate. My opinion is that it is Kolar gold and comes from Champion Reef Mine. I base my opinion on the proportion of silver to gold. I have tested all the gold of the working Mines on the field, also gold from Hutti and Dharwar Reefs.

I have worked with gold ever since I came here 17 years ago, and I have a lot of experience of it. It is a very noticeable point that the gold in the different Mines here is quite distinct one from the other in the proportion of gold and silver. These distinctions have existed as far as my experience goes here for the length of time I have been here.

On looking up literature on the subject, I find that gold on other Mines also varies when close together or anywhere-else. In no case have I come across an assay of gold i.e, bar gold where it was the same as another. In the melting of gold with which we are concerned which has been roughly done, the gold has been contaminated with 10 parts of base metal. This could have happened if it had been melted in a vessel in which brass had been previously melted.

The proportion of silver to gold is the distinctive test. The gold before Court might have been impure sponge gold.

The gold produced on the Field is sent to England. The only way to get Kolar Gold is to get it dishonestly. The gold before Court No. 1 is what I analysed.

By the Court. I did not analyse the base metals because I did not think it would have any bearing on the case as it was so contaminated.

Cross Examination by Mr. Narayana Rao, Government Advocate.

I have taken no Degree in Chemistry. I studied in the west of Scotland Technical College. I passed examinations. I hold certificates that I passed in Chemistry (City of Guild Certificate). I hold no Diplomas.

Before coming here, I was employed in Glasgow. Assaying is included in my every day work. Assaying is the same as analysis. It is wrong to say that it is different. The object of assaying is to determine the quantity of metal in an ore. An assay of gold determines the quantity of gold in the ore. Assaying also finds out the other metals in the ore. Analysis means the finding out the various metals contained in the object subjected for examination. I have analysed gold with this object. I last did that 3 or 4 years ago and before. I did it for my own information in my Laboratory. I have not noted the result. I have not got the analysis of any gold on the Kolar Gold Field. I have got the assays.

I am in the pay of all the Companies. I am employed by John Tayler & Sons. My employers are all interested in all these 5 Mines.

I have assayed gold at home sent from other Mines in the world.- the Crown Mine in New Zealand. I cannot remember the names of the others. I have not analysed gold to determine the various metals contained in it but I have assayed it as in Exhibit A. I cannot remember the results in England.

What I said with reference to Hutti and Dharwar was the same kind of assaying as in ExhibitA. The Dharwar Reef gold is 892 gold, 100 silver, and 8 base metal. I made this analysis 2½ years ago.

40

A complete analysis is a very difficult matter. I could do so but I am not in the habit of doing so. It takes too long. Particular skill is required for this. I have examined gold of 6 Mines on the Field. I have assayed it, not made a complete analysis of it. The proportion of gold to silver in Champion Mines always the same to within 1 or 2 parts in a 1000. Whenever the proportion 908 of gold and 75 of silver was found, I could not always say it was Champion gold.

I have the average of the assays of the gold produced on the different Mines and I base my conclusions on these averages and the test. I have made an average in the last 12 months, since this claim was made. I took the figures of each Mine and struck the average. The figures were recorded by the Superintendent of each Mine. It did not form a portion of my duty to do so. I was not asked to do so before this. I have not tested the specific gravity of the gold on these Mines. Silver is invariably found with gold.

I cannot say if the proportions vary at different depths in the same Mine. I can give no opinion on this.

I have assayed gold from Champion Reef a dozen times, just to find the proportion of gold and silver. It is not always the same. I have no record of these assays. I cannot say the exact proportions on each of these occasions. I cannot assert positively that this gold is from Champion Reef and from nowhere else. It is my opinion. I have assayed gold for Mysore West and Mysore Mynal Companies known as Tank Block. They worked till 1902-03. I have only assayed their cyanide gold. I cannot say the proportion of gold and silver in that Mine. The Coromandel Mine stopped milling about 6 years ago. I have not assayed any gold from that Mine. I have also assayed Mine Reef gold. I have not assayed gold from East Mysoreyaswami Mine. All these Mines adjoin each other. In exhibit A. I have certified that it is gold of Kolar Gold Fields. I have not mentioned that it is Champion Reef gold. Since giving that certificate I have got the

averages from other Mines and then came to the conclusion it was Champion Reef Mine gold. Because I knew I had to be a witness in this case, I obtained the information. I knew I had to give evidence when I drew up Exhibit A. I did not think of averages then. It struck me since it was better to do so. I had the 12 months' proportions from each Mine and by comparing them I came to the conclusion it was Champion gold. Any one could have come to this conclusion. It did not require a Chemist to do so. I did it not as a Chemist but as an ordinary man. From the language I have employed in Exhibit A, I mean the gold could have come from one of the Mines on the Field. I cannot say if gold of this proportion is found in other Mines in the world or not, but it is impossible. I took 2 lots of five grains to make this assay. Five grains is less than the weight of a two anna piece. I have divided that weight into 1000 parts. 75 parts of silver was found out by weighing the gold, not the silver.

Gold is first weighed. Then it is cupelled with lead. That drives off the base metal. It is then weighed again and the weight of the base metal is found. Then you add excess silver and lead again, and cupel. You then get a button of gold and silver. The silver is dissolved in nitric acid and the remaining gold is weighed.

There are two kinds of analyses - quantitative and qualitative -. I call Exhibit A quantitative analysis of the gold and silver. In qualitative analysis, the metal is not separately extracted and weighed.

Re-examination.

Exhibit B is a list of averages of gold and silver on all the Mines of the Field for the last 12 months.

(Note. Mr. Narayana Rao objected to this being filed as an exhibit.)

I have assayed Oorgaum, Nandiduroog and Balaghat Mine gold.

By Mr. Narayana Rao.

42

By Mr. Narayana Rao.

The assays were handed to me by the different Mines, I assayed Oorgaum, Nandidurg and Balaghat once about 2 years ago. I do not remember the result.

(sd) P. F. Bowring.

1-3-11.

The assay made by two individuals might vary a little. There might be a difference of 1 to ½ per 1000.

1-3-11.

(Sd) P.F. Bowring.

1st class Magistrate, Kolar Gold Fields.

Further evidence in the Gold Claim Case. 4th March 1911.

Mr. W. Pritchard, Superintendent, Marikuppam. 2nd witness. On oath.

Our office supplied information about the assay of gold to Mr. Leslie. I have correspondence to that effect. On 7-1-1911 we sent average assays of mill gold bars for 18 months ending 31-12-1910, from July 1909. On 16th February 1911 we sent average percentage of silver in mill gold bar from November 1909 to October 1910. The Reduction Officer gave us these figures from his books.

The figures shown in Exhibit B, tally with the figures in the Reduction Officer's books. (Note.- Books produced in Court and compared.) The gold is assayed every month and the result recorded.

Cross Examination.

The figures are the averages for the various months. Each figure is the average of the gold bars melted in a month. We keep result of the assay of each bar. The figures for January 1910 is the average of 18 bars of gold. The proportion of gold in these bars varies from 940.5 to 934.5. The bars of gold are obtained by ordinary abstraction of the metal from the ore. No refining is done. The gold is melted before bars are made from sponge gold. In melting sponge gold some of the impurities disappear. Each time gold is melted it improves in fineness. The Mysore Mines started somewhere in the eighties. I have the figures of the early years. We have not records of assays of gold from all the different parts of the Mine. I cannot say if the proportions of gold vary in different parts of the Mine. I should call the variation of 940.5 to 934.5 a very small variation. The only explanation is that the gold varies slightly in different parts of the Mine.

Each bar possibly contains gold from different parts of the Mine.

The average in January 1900 was 923.2
" " 1905 " 927.3
" " 1895 " 937.0
" " 1890 " 920.0

I have not got the back figures for the silver except since July 1909 to December 1910. We do not make assays of silver as a regular thing. This is done in England and the result sent to us. The gold assays are made by us. The assays in Exhibit B were not made by me personally.

(Sd) P.F. Bowring.

1st class Magistrate.

J. Perrew, Reduction Officer, Balaghat. 3rd witness.

We supplied some figures to Mr. Leslie from Balaghat Office. The figures in Exhibit B Correspond to our figures in the Books. (Note.- Books produced in Court and compared). The figures for 6 months were prepared by me. I was on leave during the other 6 months. I prepared the figures for the first 3 months and the last 3 months.

Cross Examination.

The Superintendent of my Mine asked me to supply Mr. Leslie with a copy of these figures. They are the averages of the month. In the month of January (1910) there were three bars. I was not asked for the averages of previous years. I have not brought them. I cannot say if the averages of January for the last 10 years is always the same. There are four shafts in Balaghat Mine. The gold of each shaft is not milled separately. I wrote up the book myself for 6 months of the year.

(Sd) P.F. Bowring.

1st class Magistrate.

F.L. Wilkins, Cashier, Champion Reefs. 4th witness.

We supplied information to Mr. Leslie regarding assay

45

of gold. I produce the books we keep shewing the assays. These averages are thev same as these sent to Mr. Leslie. (Note.- Compared with Exhibit B and found to be the same except August which is 918.0 instead of 918.2) The silver is also compared and found to be the same with Exhibit B.

Cross Examination.

I did not take the assays. The Reduction officer sends in the assays. The book I now have before me contains the averages of assays of each bar. I have the details of each assay. The average for January was the assay of 10 bars varying from 918.5 to 919.0. Silver 72 to 81. In January 1905 the highest figure was 918.5 and the lowest 901.0. Silver was 70 to 85. I have not got the average. The books are not written by me but the figures checked by me.

(Sd) P.F. Bowring.
1st class Magistrate,

R.C. Carlton, Accountant, Mandidurg. 6th witness.

I checked the figures in Exhibit C, with Mr. Grey's bullion assay book. This is a correct copy of this book.

Cross Examination.

I did not write up the book. I know who wrote it. I cannot say if it was correctly written or not. I could not say off-hand the averages of previous years.

(Sd) P.F. Bowring.
1st class Magistrate,
Kolar Gold Fields.

46

EXHIBIT (A)

CERTIFICATE.

The examination and assay of a piece of gold received from F. F. Bowring, Esquire., Senior Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields, on the 11th November 1910. The gold was contained in a sealed packet.

The gold with residue of sample taken together with the fine gold extracted during the analysis as well as the covers and seals are returned.

Result:-

Gold	906	parts	per 1000
Silver	75	"	"
Base metal	20	"	"

From the result obtained I am of opinion that this gold has come from the Kolar Gold Fields.

(Sd) H. M. Leslie.
Consulting Metallurgical Engineer.

Exhibit B is the list of averages.

Exhibit C is the list of averages for Nandidurg. The figures are the same as those for Nandidurg in Exhibit B. This is signed by Mr. C. H. Richards, and Mr. R.C. Carlton. Mr. F.C.Grey, Reduction Officer, certifies it to be a correct copy of the assay book.

47

EXHIBIT B.

AVERAGE FINENESS OF MILL BAR GOLD.

KOLAR GOLD FIELD

FOR YEAR 1910.

Month	Mysore		Champion		Oorgaum		Nandidrug		Balaghat	
	Au.	Ag.	Au.	Ag.	Au.	Ag.	Au.	Ag.	Au.	Ag.
January	936.9	55.2	917.6	75.5	907.02	83.69	894.0	98.4	910.19	83.5
February	934.7	57.6	915.7	76.4	905.54	84.48	895.3	99.4	910.88	84.4
March	933.5	58.6	917.0	73.0	907.27	83.57	896.6	99.4	906.86	83.8
April	936.1	57.7	918.5	73.1	904.19	84.32	892.0	101.0	911.86	81.5
May	936.7	57.3	917.9	72.0	902.01	88.58	894.9	100.0	912.8	80.3
June	935.5	57.3	917.2	72.0	904.69	84.61	893.9	101.9	911.6	80.2
July	936.4	55.1	917.0	72.7	906.99	82.67	893.2	102.4	913.8	78.2
August	935.2	57.2	918.0	72.0	905.32	82.52	895.0	100.4	918.6	76.5
September	936.5	57.7	917.3	72.1	903.70	84.29	899.4	96.9	913.2	75.2
October	935.4	57.6	917.6	72.4	906.68	84.35	897.6	96.0	910.9	79.8
November	932.9		916.5	72.5	905.98	84.52	894.3	98.2	914.93	71.5
December	931.8		917.1	71.7	899.36 x	84.38	892.9	101.2	914.79	68.6
	935.05	57.13	917.283	72.95	905.399	84.33	894.9	99.6	912.534	78.62

x Includes base bar.

Bank fine average from January to July 1907.

Au.	908.9
Ag.	78.2
Base	12.9

48

Exhibit C.

THE HAMMERSLEY COMPANY, LIMITED.

AVERAGE FINENESS OF MILL BAR GOLD FOR BOTH GOLD AND SILVER FROM JANUARY 1910 TO DECEMBER 1910.

	Gold	Silver.
January	894.0	98.4
February	895.3	99.4
March	896.6	99.4
April	892.0	101.0
May	894.9	100.0
June	893.9	101.9
July	893.2	101.4
August	896.0	100.4
September	899.4	96.9
October	897.6	96.0
November	894.3	98.2
December	892.9	101.2
Average for year	894.9	99.6

Norseman, 11th February 1911.

Sd/ C. H. Richards.
Supt.

Sd/ A. C. Carlton.

I hereby certify that the above table of assay values is a correct copy from the Assay book.

Sd/ J. A. Grey.
Reduction Officer.

Legis File No. 10

Serial No.

Diary No. of letter replied to

GENERAL AND REVENUE SECRETARIAT.
(Legis)

, the 19..

Date of issue 21-3-11

Signed by Mr B Ramaswamy

Proceedings of the Government of His Highness the Maharaja of Mys

READ—

First Proceedings — J 1431-01

Leg 16-10 dt 11th November 1911

requesting the first Advocate appeared on behalf of first before the Special Magistrate Court, ~~ORDER REQUIRED—No.~~

at the Kolar Gold Fields to oppose the claim of the Superintendent of certain mining Co's in the Fields in regard to a piece of unreserved Gold Land

over

SUBJECT.

The 29th March Court as to the Writ

Thesis

Letter No. 241 of the 17th March from the Govt. Advocate in Mysore forwarding unauthenticated Copies of the order of the Magistrate upholding the claim of the petitioners to the Caste and requesting for ~~early orders~~ orders of Govt. either for the High Court being moved either on the revision side or an appeal being preferred to that Court.

3. Letter No. 760/251 of the 6th March 1911 from the Asst. Magistrate, Kolar, stating that under Sec. 436 of the Criminal Procedure Code he has submitted the records of the Case to the High Court for revision of the orders passed in the Case, and requesting that for reasons stated the Govt. Advocate may be asked whether to appear on the revision

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

tide or to prefer an appeal to that Court against the order of the Special Magistrate.

Order thereon. J 2658-9 & 21-3-11
Depts 16-10

On a perusal of the papers connected with the Case put up, it appears that this is a fit Case for an appeal being preferred to the Chief Court against the order of the Special Magistrate. The Govt Advocate is requested to prefer an appeal against the said order early and to report the result to Govt in due Course

SD
21-3-11
In Dept Secy to Govt.

2.
The Dist Magistrate, Ukha
The Govt Advocate, Mdlay

SV-11
21/3/11

XD 125
21/3/11

57 -1

G.R.S. 26]

Legis File No. 16-20
Serial No 1

Diary No. of letter replied to ...

Draft D/C

No. J 2660.

General and Revenue Secretariat

(Legis)

, the *19* .

To

The Resident

Kolar Gold Fields

Sir,

Date of issue 21-3-16

Signed by Mr B. Ramamurthy

I am directed to forward herewith a petition addressed to His Excellency the Governor in Council by Mr. [illegible] requesting you to prefer an appeal to the Chief Court against the order of the Special Magistrate, Kolar Gold Fields in regard to a piece of unwrought gold produced before that Court as subject of theft and claimed by the Superintendent of certain mining Companies as belonging to them, I am

over.

SUBJECT.

53

sued to request you to
kindly meet Mr Deepak Commissioner
upon his return to Bangalore in
connection with the above case.
Yours sincerely.

BR
21·3·11

SW-11

S. Narayana Rao Esq
Civil Works

List of enclosures,

Copied by

Examined by

GPB—20,000—25-9-10

54

Immediate Legis

G.R.S. 26]

2/6

File No. 16-10

Serial No. ~~13~~ 9

Diary No. of letter replied to

D O No. J 2364.

General and Revenue Secretariat
(Legis)
, *the* 19 .

~~The~~

(Dear Sir,)

Date of issue 2-6-11

Signed by mr S. Krishnamurthy

Please refer to the Correspondence ending with Govt order No J 2658-9-Legis 16-10 of 21st March 1911, requesting you to prefer an appeal against the order of the 1st class Magistrate, Kolar Gold Fields in the matter of the claim of a certain Mining Company on the G.M.F. A

over.

SUBJECT.

25

Fields, ~~[illegible]~~ to a piece of unwrought gold produced before the said Magistrate as stolen property.

(2) I am desired to request you to be so good as to furnish Govt with a full report regarding the facts of the above case, the questions which have arisen for the decision of the Chief Court and the arguments for meeting them. The entire records of the Case may also kindly be sent up for reference & return as urgent as the matter is to be heard

(3) The favour of a very early reply is requested

List of enclosures,

Yours Sincerely

S. Narayana Rao Esqr
Govt. Advocate in Mysore

Copied by

Examined by

GPB—20,000—26-9-10

56

Legis 16-10
S/14-10

Bangalore,

3rd June 1911.

Dear Sir,

As desired by you in your D.O.J 3364/Legis: 16-10 dated yesterday, I submit herewith for the --- information of Government a statement of facts in re: the claim of certain Mining Companies to the gold --- produced before the Special Magistrate of Kolar Gold Feilds, in criminal case No.676 of 1909-10 and the - points which the Chief Court has to decide in the -- appeal, together with the entire records available in the office of the Government Advocate. I have also - stated therein how I propose to support the appeal -- filed against the order of the Magistrate on behalf of Government.

2. The records submitted may kindly returned when done with.

Yours sincerely,

S. Narayana Rao

To,

S. Hiriannaiya Esq.,

Assistant Secretary.

Memorandum by the Govt Advocate

Encl to 581-C01 Note Enclosure to GL 09-57

In the matter of the claim of certain Mining Companies to the gold produced before the Special Magistrate, Kolar Gold Fields, in Criminal Case No. 676 of 1909-10.

One Babu saib was convicted by the Special Magistrate K.G.F. in Criminal case No. 676 of 09-10 of being in possession of unwrought gold (which was also said to be badly melted sponge gold) valued at Rs340 - an offence punishable under Section 13 read with sections 6 and 12 of the Mines Regulation.

2. This conviction and sentence of one year's imprisonment was confirmed by the Chief Court in criminal appeal case No. 119 of 1909-10.

3. The Superintendents of five gold mining Companies which are said to be the only ones now carrying on mining operations in the Kolar Gold Fields, applied to the Magistrate in Mis. case No. 179 of 09-10, for delivery to the Mining Board, on their behalf, of the said piece of gold on the ground that the same must have been stolen from one of their mines.

4. The Magistrate summarily dismissed the application holding that the application was not maintainable in as much as they are not in a position to prove to which particular Company the gold belonged and that the Mining Board is not a legally recognisable body.

5. This order was reversed by the Chief Court on the grounds that the gold may belong to some one or other of the five applicants though it may not be possible to say to which particular one and that they should have been given an opportunity to adduce evidence on the said point. The case was sent back for a fresh decision.

6. On remand, the petitioners examined 5 witnesses. The 1st witness Mr. Leslie, deposed that he assayed the gold in question and found it to contain 905 parts of gold, 75 parts of silver and 20 parts of base metal and that he gave the certificate, Ext.A. In this certificate the witness has stated that in his opinion "this gold came from the K.G.F". Seeing that this certificate was not

58

sufficient to establish the title of the petitioners to the gold in question, the witness was made to depose in Court that the gold was of the Champion Reef Mine and that the reason for this opinion was the proportion of gold to silver which (he said) was the same as the average proportion in Champion Reef Gold. In support of this opinion of his he produced Ext. B a statement alleged to contain the average proportions in the five mines of the petitioners. This document shows that the proportion in Champion Reef gold is 917 parts of gold anf 72 parts of silver, whereas the gold in question contains 905 parts of gold and 75 of silver. Thus the evidence of this witness is, to say the least of it, inconclusive and unreliable. The remaining four witnesses merely produced their accounts to prove the figu figures in Ext. B. On this illegal and inconclusive evidence and on the opinion of one Mr. Weeks who had been examined in the case - - against Babu saib, the Magistrate held that the said gold is the produce of the Champion Reef Mine and ordered the same to be given over to the petitioners.

7. The District Magistrate has, in his elaborate Proceedings of 16th March 1911, exhaustively dealt with the utter unsoundness of the reasoning of the Magistrate in the said order and recommended to the Chief Court its cancellation.

8. As directed by Government Proceedings No.J 2658-9/Legis 16-10 dated 21st March 1911, an appeal has been filed on behalf of Government.

9. The only points the Chief Court has to decide in the case are:-

(a) Whether on the evidence adduced by the petitioners, they have succeeded in proving that the gold belongs to some one or other of them?

(b) Whether an appeal lies against the order of the Magistrate?

(c) Whether the Government has the right to prefer an appeal against the order of the Magistrate, seeing that the gold does not belong to them, and

(d) whether the order in favour of all five petitioners jointly is legal?

59

As to the point (a) the proceedings of the District Magistrat above referred to contains all the arguments that can be urged against the evidence adduced by the petitioners and the unsoundness of the Magistrate's reasonings and finding.

11. Points (b) and (c) are the probable objections which the opposite side may, as I anticipate, raise against the appeal preferred by Government. These objections may be met by the language of section 520 of the Criminal Procedure Code and by the fact that the Government is the Prosecutor in the case against Babu saib and that the property will have to go to Government in case no other person succeeds in proving his title to the same. It is thus the interest of Government to see that no fictitious or unfounded claims succeed in Court.

12. The plain language of section 26 of the Civil Procedure Code declares that though a claim may be put by any number of persons, jointly or severally or in the alternative form, the decree will be in favour of such person or persons as are found by the Court to be entitled to the property.

3rd June 1911
Bangalore.

Sd/- S. Narayan Rao
Government Advocate.

Legis 16 – 10 60
Journal 15

No. J 3462 dated 16/6/11

Mysore
8 June 1911

Dear Mr ~~Srinivasa~~ Iyer

I send herewith certain papers with a memorandum of questions arising thereon amendments
Could you kindly go through them and re

I am to add that if through illness or necessary You

wish your opinions at

your early Convenience

for the use of the Govt

of H.H. the Maharaja?

If for any reason

You are unable to ~~do~~

do so or precluded

on account of your

official position, kindly

return the Papers early.

may be requested

to appear before the

Chief Court on be-

half of Government.

The Case will be fixed

for hearing on a Con-

venient date after

the reopening of the

Chief Court on 19th

I am desirous that you
of this month ~~Please~~
inclosed enquiry
let me know if it will
be convenient to do
so.

I am also desirous
I ~~shall also be~~
~~obliged~~ that you will inform
enquiry ~~if you please~~
let me know what
usual fees are for the services
respecting which I am applying
above. Yours sincerely

CM

Leamington

29th 11
11

Legis 16-10 61
serial 4 / 16

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record]

Elk Hill View, J 3163.
Ootacamund, 21st June 1911.

Dear Sir,

Your confidential letter J. No.34-3, dated the 14th instant was delivered to me here the day before yesterday. I am not precluded from giving an opinion upon the questions raised in the Memorandum. I shall try and send you the opinion as early as practicable. My fee for the opinion will be Rs.250/-. If, however, I am engaged to appear before the Chief Court, my fee for the 1st day will be Rs.1000/- and my refresher for the subsequent days will be Rs.500/- per diem. But I do not expect that the case will take more than a day. My travelling charges will, of course, have to be paid separately. If I am engaged to appear before the Court, my fee for the opinion will be credited towards the 1st day's fee of Rs.1000/-. I shall not be able to find time to come there in July, but some Saturday in August will probably be suitable I shall thank you to let me know if my opinion fee is agreed to.

Yours faithfully,
K Sivaswamy Aiyer

To

C.S. Balasundram Iyer, Esq.,
Offg. Secretary to Government,
General & Revenue Departments,
Bangalore.

N B—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

GPB—30,000—23-2-11

X

62

G.R.S. 26]

Legis File No. 16-1

Serial No. 17

2446

Diary No. of letter replied to

D.O.

No. Legis 3576

Legis 16-10.

General and Revenue Secretariat

(Legis)

, *the* 19 .

Date of issue 24-6-11

Signed by [illegible]

To

Dear Sir,

I am desired to ac-knowledge the receipt of your letter dated the 21st June 1911 and in reply to state that Govt agree to the opinion fee of Rs 250 charged by you ~~which will eventually be credited towards the Engage-ment fee if you are to~~

I request you to kindly send your opinion as early as convenient. I shall let

over.

SUBJECT.

24.6.11

63

you know later on if the Govt.
desire to ~~engage you in the~~ secure your appearance
~~case~~. on their behalf in the Chief Court

Yours ~~Sincerely~~ faithfully

CSM

To
P. S. Sivasami Iyer Esqre B.A.B.L.
C.I.E,
~~Govt~~ Advocate General -
Elk Hill View, Ooty -

List of enclosures,

Copied by

Examined by SM

GPB—20,000—25-9-10

G.R.S. 26J

Confidential

~~S. Dis. Legis~~ File No. 10

Serial No. 18

64

Diary No. of letter replied to .....

No. J 2417 Encl 1 file
Legis 16-10

General and Revenue Secretariat

(Legis)

, the 19 .

To

Date of issue 15-7-11

Signed by for Secretary

Dear Sir

I am desired to return herewith the file of papers connected with the claim of the Mining Board, Kolar Gold Fields in regard to certain confiscated gold, which had been called for from your predecessor in office by Mr. Narayana Rao, and to request you to be so good as to let

over.

SUBJECT.

65
prepared with the case

~~[redacted]~~
when it should come
on for hearing in the
Chief Court. I am also to request that ~~you~~
may be communicated beforehand ~~on the date~~ before you appear as
yours sincerely the date to be heard
fixed by the Court

Sd
Assistant Secretary to Govt

2o

C. S. Doraswamy Iyer Esq B.A., B.L.
Govt Advocate
Bangalore

SNCW
14/7/14

List of enclosur

Copied by ad
Examined by SNCW

GPB—20,000—25-9-10

Legis 16 Aft 10 - 11
Serial 19 J 177

Office of the Govt:Advocate,

Bangalore dated,17th July 11.

Dear Sir,

I am in receipt of the file of papers - sent with your D.O. No. J 247/Legis 16-10 connected with the claim of the Mining Board about some confiscated gold, I shall be prepared to argue the - Revision Petition on the date of hearing which I - understand has not, as yet been fixed. I shall - consult Government before the date that may be fixed is agreed upon.

Yours sincerely,

Sd/- Boraswamy Jr

To,

S. Hiriyannaiya Esq., M.A., B.L.,
Assistant Secretary to Govt.

67

.MY AIYER, C.I.E.
ADV E-GENERAL.

Legis 16 of 1910
Serial 20

HIGH COURT,
Madras, 10th September 1911

2734

Sir,

With reference to your letter dated 14th June '11, I have the honour to send herewith my opinion in re. the Mining Board's claim to the gold produced before the Special Magistrate, Kolar Gold Fields, in Criminal Case No. 676 of 1909-10. I regret the delay that has occurred in furnishing the opinion. I shall thank you to remit my fee at an early date and oblige.

Yours truly,

Sivaswamy Aiyar

To

C. S. Balasundram Aiyer, Esq.,
Revenue & General Secretary,
Government of Mysore,
Bangalore.

OPINION.

In re. the claim of certain Mining Companies to the gold produced before the Special Magistrate, Kolar Gold Fields, in Criminal Case No. 676 of 1909-10.

The points upon which my opinion is desired are, I believe, those mentioned in paragraph 9 of the Government Advocate's Memorandum and in the note by the Assistant Secretary. Some of the questions raised in the Memorandum and the note are questions of fact. Whether the gold in question was Champion Reefs gold or gold which must have been obtained from one or other of the mines represented by the claimants depends upon the evidence in the case. The evidence and the order of the First Class Magistrate have been ably criticised by the District Magistrate in his Proceedings of the 16th of March 1911, and I do not think I can usefully add anything to his observations. The evidence adduced by the claimants seems to my mind to be very inconclusive. As pointed out by the District Magistrate, some of the evidence admitted by the First Class Magistrate was not admissible in evidence. I do not, however, agree with the District Magistrate in his view that the evidence of Mr. Weeks given at the trial of Babu Sahib was inadmissible in evidence. It is open to a Magistrate, acting under section 517 of the Criminal Procedure Code, to proceed upon the evidence already recorded at the trial. Though no appeal lies against an order under section 517, it may be made the subject of revision and if the order of the Magistrate is vitiated by any errors of law or illegality of procedure it can be interfered with on revision. As the State is a party to the Criminal Case, I do not see why the Government cannot apply to the Chief Court for revision of the order.

The next question is whether the order of the Magistrate

69

is right in directing the gold to be delivered over to the petitioners. It is observed by the Chief Court in its order of remand that if the Court is satisfied that the property belongs jointly to the claimants or severally (which I take ~~it~~ to mean in the alternative) to one of two claimants and if the two claimants are agreed that it may be made over to them, there is no reason why the agreement should not be given effect to. After the most careful consideration I am unable to say that the proposition laid down by the Chief Court is wrong in law. Section 26 of the Old Civil Procedure Code authorises the joinder as plaintiffs of persons in whom the right to any relief is alleged to exist in the alternative in respect of the same cause of action and judgment may be given for such one or more of the plaintiffs as may be entitled to relief. Under the old Rules of Procedure in the English Courts persons having inconsistent titles could not join together as co-plaintiffs. But the rules have now been modified and the present rule of procedure in England very nearly corresponds to the rule laid down in section 26 of the Civil Procedure Code (see Daniell's Chancery Practice, 7th Edition, Vol. I, page 193). In the absence of any agreement between the plaintiffs who claim in the alternative, the Court may be obliged to decide which of the plaintiffs is entitled to relief. But if the plaintiffs who claim in the alternative are agreed that there need be no trial as to the question of title inter se between themselves and if it is clear that one or other of the plaintiffs must be entitled to relief as against the defendant, the courts will be disposed to award relief in favour of the plaintiffs jointly. The decree in such a case will be not in favour of A. or B. or C. but in favour of A. B. and C. Suppose A. obtains an assignment from B. and C. of all such rights as they have, or may have, in the subject matter; can the ~~xxxxx~~ Court refuse to give a decree in favour

70

of A. on the ground that A. has failed to prove whether he or B. or C. is entitled? I do not think the Court will so refuse. There have been very few cases in which the question has arisen for discussion. The case which is most nearly in point is the one ~~decided~~ reported in 22 Calcutta Series, page 833. The observations of the Court at page 842 are of value. (In the words within brackets at page 842, the word 'defendants' is an obvious misprint for 'plaintiffs.') The case in 28 Madras page 500 may also be usefully referred to though the circumstances of that case are not altogether similar. Of course, in order to justify an order in favour of all the claimants who claim in the alternative, it must be established that the property must <u>necessarily</u> belong to one or another of them.

Madras,
10th September 1911.

Srinivasa Ayyangar

7!

G.R.S. 28.]

Legis File No. 16-10

Serial No. 21

19

Diary No. of letter replied to—

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

( )

, *the* 19

Date of issue

Signed by

READ— Correspondence ending with letter dated 10th Septem 1911 from the Hon'ble Mr. P. S. Sivaswamie Iyer B.A. B.L Advocate General, Mysore C.I.E. ~~forwarding~~ sending his opinion in a certain matter ~~[illegible]~~ ~~Opinion memorandum No.~~ ~~in re the case of the Kolar Gold Fields thru Board to the gold produced before the Special Magistrate Kolar Gold Fields in Criminal Case no 626 of 1909~~ in regard to Crimn Case no 676 of 1909-10

SUBJECT.

[illegible] requesting that his fee
of rupees two hundred and fifty
only for [illegible] the opinion [illegible]
be permitted to him early

Order thereon :- No. J923-4/Legs. C-10 dt. 13-C-11

Govt. are pleased to sanction the ~~Govt. Advocate General's~~
~~grant of a fee of Rs 250~~ to Mr. Sivaswamy Iyer for giving his opinion
~~and~~ the comptroller is requested in this case
to arrange for the payment ~~a~~ ~~fee~~
~~of rupees two hundred and~~ the amount at Madras.
~~fifty only being remitted~~
~~to the Hon'ble Mr. P.S. Sivaswamy~~
~~Iyer B.A., B.L., C.I.E.,~~
~~Advocate General of Madras,~~
~~at Madras~~

By order, Secretary to Govt.

SN(11)
20

The Comptroller, Mysore Govt.
and the Hon'ble Mr. P.S. Sivaswamy
Iyer B.A., B.L., C.I.E., Advocate
General of Madras, Madras,
~~with reference to his corresponding~~
~~letter No. dated 10th Sept. 1911~~

Recd SN
13/9/11

at

73

Proceedings of the Government of His Highness the Maharaja of Mysore.

R e a d :-

Correspondence ending with letter dated 10th September 1911 from the Hon'ble Mr.P.S.Sivaswami Iyer, B.A., B.L. C.I.E., Advocate General, Madras, sending his opinion in regard to Criminal Case No.676 of 1909-10.

----------000000--------

Order thereon No. J 923-4/Legis 16-10-21

Dated Bangalore 13th September 1911.

Government are pleased to sanction the payment of a fee of Rs. 250/- to the Hon'ble Mr.Sivaswamy Iyer, Advocate General, Madras, for giving his opinion in the case . The Comptroller is requested to ~~arrange~~ arrange for the payment of the amount at Madras.

S Srinivasaraya

For Secretary to Government.

SV

To

The Comptroller, Mysore Government.

The Hon'ble Mr.P.S.Sivaswamy Iyer, B.A., B.L., C.I.E., Advocate General, Madras.

M.N.

No 176
Legislative one
III
5/3/12

DIARY No. 12302 74

Office of the Government Advocate in Mysore

Bangalore dated, 4th May 1912.

Read No. 18-11

From,

The Government Advocate in Mysore,

Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja of Mysore, General and Revenue Departments.

Sir,

Adverting to Government Proceedings No.2514-9/Legis. 10-10 dated 21-2-1911, directing me to prefer an appeal to the Chief Court against the order passed by the Assistant Commissioner and 1st class Magistrate Kolar Gold Fields in Criminal Miscellaneous case No.179 of 1909-10 and to report the result of the same, I have the honour to state that the Honourable Judges of the Chief Court have remanded the case to the Lower Court for further evidence being taken and submitted to the Chief Court.

A copy of order passed in the case is herewith submitted.

I have the honour to be,

Sir,

Your most obedient servant,

[signature]

Government Advocate

75

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday the 28th day of February 1912.

P r e s e n t

Sir Stanley Ismay , K. C. S. I., Chief Judge

and

r. Justice P.S. Krishna Rao, Rao Bahadur.

Criminal Revision Petition No.112 of 1910-11
Criminal Revision Case No. 45 of 1910 - 11.

Government of Mysore. (Opponent). Petitioner.

(By Mr. C.S. Ekraswami Iyer).

VS.

1. W. Pritchard.
2. H.F. Gifford.
3. R.H.P. Mullen.
4. C.H. Richards.
5. H.W.A. Cooke. (Petitioners). Opponents.

(By Mr. C. Krishnamurthi).

Petition against the order of the Special Magistrate of Kolar Gold Fields, in Criminal Miscellaneous Case No. 179 of 1909-10, ordering that the gold (which was the subject matter of the offence in Criminal Case No. 676 of 1909-10) be handed over to the opponents.

Read also reference No. 1693 dated 17th March 1911 by the District Magistrate of Kolar, on the same subject. (Revision Case No. 45 of 1910-11).

Order:

76

These cases coming on for hearing on Thursday, the 15th day of February 1912, the Court pronounced the following : -

O R D E R

Mr. Justice P. S. Krishna Rao : -

The first contention raised by the learned Government advocate in this case is that the lower court was wrong in admitting in evidence the deposition given by Mr. Weeks in Criminal Case No. 676 of 1909-10, without filing it as evidence in this case and without giving the petitioner an opportunity to cross-examine the witness. There is not, in my opinion, much force in this contention. An order under section 517 Criminal Procedure Code regarding the disposal of property produced before a criminal court in the course of an inquiry or trial, may be based as well upon the facts elicited at the inquiry or trial as upon any additional evidence which the court in the exercise of its discretion may allow the parties to adduce in order to enable it to determine in a satisfactory manner how the property should be disposed of; and if the Government advocate wished to cross-examine Mr. Weeks for the purpose of showing that his testimony could not be acted upon, there was nothing to prevent him from asking the Magistrate to issue a summons to the witness in

that

The next contention urged by the Government Advocate is that upon the evidence now on record, the finding of the Magistrate that the gold recovered from Babu Sah must have been stolen from one of the five mines which the opponents represent, cannot be sustained. I have carefully examined that evidence and am of opinion that even if it is sufficient to warrant a finding that the gold in question must have been stolen from one of the mines in the Kolar Gold Fields, it is insufficient to sustain the finding that it is gold obtained from one of the mines represented by the opponents. The omission on the part of the opponents to adduce evidence to show that the other mines in the Fields have either ceased to work or do not produce gold similar to that recovered by Police, is explicable due to the fact that their attention was not drawn to it by any statement made by the Government advocate on behalf of Government that there were other mines on the Fields out of which such gold could have been got. It is somewhat remarkable that although this was the real point in the case, since the facts proved exclude all possibility of the gold having been brought from the Mining areas, where alone it, was Government advocate did not think it fit to do so even before the Court in support of the contention now put forward

78

him. There was apparently some mistake on both sides, each party having thought that the facts relied on by it were sufficiently well known and could not be disputed.

As there are not sufficient materials upon record to enable the Court to arrive at a satisfactory conclusion as to what the rights of the contending parties are to the property found in the possession of Babu Sab, I am of opinion that the case should go back for further evidence being taken. Both parties will be at liberty to adduce additional evidence, and the evidence so taken will be submitted to this Court as early as possible.

(Sd). P.S. Thirumala Rao

J U D G E.

The Chief Judge : -

The case out of which the present appeal or application arises is the sequel to the case of Pritchard V. Government of Mysore reported in XV My. C.C.R. 209. The petition therein referred to has now been disposed of on the merits. The finding of the Magistrate is apparently to the effect that the gold recovered from the possession of Babu Sab belongs to the Champion Reef mine and that, even if the evidence regarding [redacted] averages

he

7

be discredited, it must still belong to one of the five mines represented before the Magistrate, these being the only mines which are at present producing any gold. On the strength of this finding the gold has been ordered to be made over to the Secretary of the Kolar Gold Fields Mining Board.

From this order an appeal has been preferred by the Government and an application in revision has been somewhat unnecessarily submitted by the Kolar District Magistrate.

The question is not one of any great importance but I incline to the view that an application made under section 520 of the Code of Criminal Procedure is an application by way of revision not by way of appeal. Under section 404 no appeal lies from any order of a Criminal Court except as provided for by the Code and where a right of appeal is given eg in sections 250, 486, 515 etc., the language used is very different from the language used in section 520.

Turning now to the merits of the case I note that under ordinary circumstances an order for the disposal of property made under section 517 of the Code is based solely and entirely upon the facts elicited at the inquiry or trial. I do not say that the Code precludes the taking of supplementary evidence in very

exceptional

89

exceptional cases but I find it necessary to make the above remark because it was seriously argued before this Court that evidence given at the trial is inadmissible for the purpose of determining the manner in which ~~the~~ property produced before the court should be disposed of. Now the evidence in the Criminal Case (No. 676 of 1909-10) shows that on the night of the 6th March 1910 at Bowringpet one Babu Sab was caught in the act of melting a lump of gold weighing 6·83 Oz and valued at Rs: 340. All the gold was at melting point but a small piece of sponge gold which had not lost its distinctive character was still adhering to the rest of the lump thereby showing very conclusively that the entire lump was originally sponge gold. The accused who made no claim to the gold and said that a false charge had been fabricated against him, was convicted under sections 6 and 12 read with section 13 of the Mysore Mines Regulation 1906 and was sentenced to one years rigorous imprisonment. On an appeal to this Court the conviction was upheld but the sentence was reduced to six months' rigorous imprisonment.

Section 6 of the Regulation relates to the unlawful possession of mining material (which includes sponge gold) and section 13 to the unlawful possession of unwrought gold.

At the supplemental inquiry which followed upon the order

87

of demand the correctness of the evidence given at the trial was not (and probably could not have been) in any way challenged by the Government advocate who appeared on behalf of the Government and indeed it is by no means easy to ascertain from the record the precise grounds upon which the claims of the mine owners were resisted. No explanation was volunteered and no witnesses were called. Nor can the nature of the counter claim be gleaned from the cross-examination of the witnesses who were called by the opposite side. The object of calling these witnesses was to show that the gold recovered from the possession of Baba Sab was in all probability stolen from the Champion Reef mine. But the question as to the particular mine from which the gold came is in my view one of very secondary impertance . I am dealing with a case of sponge gold not of unwrought gold and I desire to make it perfectly clear that the view which I take of the case is based entirely upon the fact that the gold which was found in the possession of Baba Sab was sponge gold. This is of course the term used for the gold which remains after the mercury has been driven off from the amalgam and before it is converted by melting into unwrought gold. Sponge gold was already marked is mining material within the definition of that term under section 3 of the Mines Regulation its possession is liable unless the person found to be in possession is able

to prove that his possession was obtained in a lawful manner . When sponge gold is found within a mining area there is a violent presumption that it has been stolen from one of the mines.

I have had the advantage of reading the judgment of my learned colleague and I confess that I find it difficult to justify a remand . The Government knew or might have known that the gold to which they were laying claim had been stolen within the Kolar Gold Fields mining area. In spite of this knowledge the Government Advocate refrained from disclosing the grounds upon which the claim was based. There is no suggestion either in the proceedings before the Magistrate or in the petition of appeal which has been preferred on behalf of the Government that any mines are at present working within the area of the Fields other than the five mines which are interested in the present case. Many other mines were no doubt formerly in existence but it is in evidence that the Cromandal mine was closed down six years ago and that Mysore West and Tank Block have ceased working since 1907-08.

Since however my learned colleague concurs with me on the main finding I do not think it necessary to dissent from him in regard to the remand for additional evidence. This evidence

should

83

should be restricted to ascertaining what mines (if any) were working in or about March 1920 over and above the five mines which are represented before the court and it will of course be open to the Superintendent of any such mine either to disclaim his right to the gold which is before the Court or to make common cause with the Superintendents of the five recognized working mines and to show that it might have been stolen from his own mine.

The additional evidence should be certified to this Court within one month and the appeal will then be disposed of.

(Sd) S. Ismay

Chief Judge.

A.V.

"Copy"

Government Advocate

No.183

84

Office of the Government Advocate in Mysore,

Bangalore dated, 11th March 1912.

DIARY No. 92389
10-11-1912
SECTION Legis
16-10
23

From,

The Government Advocate in Mysore,
Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja of Mysore, General and Revenue Departments.

Sir,

In continuation of this office No.176 dated 4/5th March 1912, submitting copy of order passed by the Honorable Judges of the Chief Court in Criminal Revision case No.45 of 1910-11 (Government VS Pritchard and 4 others) I have the honour to enclose herewith, to be kindly returned, letter No.631 dated 9-3-1912 in original, from the Senior Assistant Commissioner and 1st class Magistrate Kolar Gold Fields intimating that the case remanded to his Court for additional evidence has been fixed for hearing on Monday - the 18th Instant, and requesting that arrangements might be made to have Government represented at the hearing of the said case. I have the honour to request that early instructions may be issued in the matter.

I have the honour to be,
Sir,
Your most obedient servant,

Government Advocate.

2 drafts

G.R.S. 28]

Legis File No. 16-10

Serial No. 24

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

( )

, *the* 19

Date of issue 15-3-12

Signed by M.S. Hiriyannaya K.G.

READ—

Govt. Pro. No. J 2658-9 Legis 16-10 dated 21/3/11, directing the Govt. Advocate to prefer an appeal against the order of the Special Magistrate in the claim of the Superintendent of certain mining companies in the fields in regard to a piece of unwrought gold produced before that court as the subject of matter of a theft.

~~ORDER THEREON.—No.~~

over.

SUBJECT.

GPB—10,000 - 29-9-10

86

2. Letters Nos 176 dated 6th March 1912
and No 183 dated 11th March 1912
from the Govt. Advocate informing in the former intimating
that the case has been remanded
to the Court of the Senior Asst.
commr and 1st class magistrate
Kolar Gold Fields for additional
evidence and that it has been
posted by that magistrate for
hearing on Monday the 18th inst. 1912
and requesting early instructions
in the matter.

Order thereon :- J2695-7/Legis 16-10-24 Encls 9 of 15-3-12

1 ~~Govt are pleased to request~~ the Govt. Advocate is requested to appear before
the court of the Senior Asst commr
and 1st class magistrate, Kolar Gold
Fields on Monday the 18th March 1912 for
the purpose of getting the necessary
additional evidence recorded & he may file
for this purpose (get) summons issued
to any officer of the Geo. Dept to give
such evidence or to produce any record that
may be pertinent to the case.

2. The Secretary to Govt Geological Dept
2 The Secretary to Govt
Geological dept will instruct
the Govt Advocate to
Colsan who

~~and for conducting the case in Court & if necessary~~
~~with the Geological Sec to Govt~~
~~Geological Dept~~

Offg. Secretary to Govt.

To the Govt. Advocate with
the enclosure to his letter
The secretary Geo. Dept
The comptroller ~~to Govt~~ Mysore
Govt

2 drafts

87

G.R.S. 26]

2 O. Legis

File No. 16-10

Serial No. 25

*Diary No. of letter replied to*_____

No. J 2410.

General and Revenue Secretariat

( )

, the *19* .

To

Dear sir

Date of issue 15. 3. 12.

Signed by Flag V.

In forwarding herewith a copy of the Chief Court order dated 28th Feb. 1912 in the appeal petition against the order of the Special Magistrate, of Kolar Gold Fields in the matter of the claim of ~~certain~~ the Superintendents of certain mines for the a piece of gold which was the subject-matter of a theft, I am desired to

over.

SUBJECT.

88

Request you to be so good as to instruct the Government Advocate in the matter as to what mines were working at the time &c. The case has been posted ~~for hearing on Monday~~ by the Senior Asst. Comm. and 1st. class Magistrate ~~for~~ Kolar Gold Fields ~~to on~~ Monday the 18th March 1912.

Yours

SP 14/3/12

2a

(Sd)

Secretary to Govt.
Genl. Depts.

List of enclosures,

Copied by CS 14/3.

Examined by

GPB—10,000—28-2-11.

Legis 16-10
Serial 26

89

J 2686

Office of the Government Advocate,

Bangalore dated, 1st April 1912.

Dear Mr. Hiriyannaiya,

The Gold Claim Case (Criminal Revision case No.45 of 1910-11 on the file of the Chief -- Court) which was remanded to the Lower Court for additional evidence, was received back - and is posted for hearing on the 11th --- Instant.

Yours Sincerely,

Boradwaraj

Legis 16-10 serial 428 J 2884 90

Office of the Government Advocate in Mysore,
Bangalore dated, 25th April 1912.

From,

The Government Advocate in Mysore,
Bangalore.

To,

The Secretary to the Government of His Highness the Maharaja of Mysore General and Revenue Departments

Sir,

Adverting to correspondence ending with Government Order No.J 2695-7/Legis 16-10-24 dated 15-3-1912, I have the honour to report that the Honourable Judges of the Chief Court have on hearing further arguments and a perusal of the evidence recorded by the 1st class Magistrate Kolar Gold Fields on remand, passed final orders dismissing the petition of Government.

2. Copies of depositions of witnesses recorded on remand by the Senior Assistant Commissioner and 1st class Magistrate Kolar Gold Fields as well as the final order of the Chief Court in Criminal Revision Petition No.112 of 1910-11, are herewith submitted.

3. The copy of the collection of printed papers on the subject of the claim of the Mining Board to the gold produced before the State Courts as subject of an offence, forwarded with Government Order No.J 1421-3/Legis 16-10 dated 11-11-1910 is herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

Government Advocate.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Saturday, the 13th day of April 1912.

P r e s e n t

Sir Stanley Ismay, K.C.S.I., Chief Judge

and

Mr. Justice P. S. Krishna Rao, Rao Bahadur.

Criminal Revision Petition No. 112 of 1910-11

Criminal Revision Case No. 45 of 1910-11

The Government of Mysore ..... (Opponent). .. Petitioner.

(By Mr. C. S. Doraswami Iyer.)

VS.

1. W. Pritchard.
2. H. J. Gifford.
3. R. H. P. Bollen.
4. C. H. Richards.
5. H. C. A. Cocke. (Petitioners.) ... Opponents.

(By Mr. C. Krishnamurti.)

Petition against the order of the Special Magistrate of Kolar Gold Fields in Criminal Miscellaneous Case No. 179 of 1909-10, ordering that the gold, which was the subject matter of the offence in Criminal Case No. 676 of 1909-10, be handed over to the opponents.

Read also reference No. 1662 dated 17th March 1911 by the District Magistrate of Kolar on the same subject (Revision Case No. 45 of 1910-11.)

These cases coming on for hearing on Thursday, the 11th day of April 1912, the Court pronounced the following:--

ORDER.

The ~~Chief~~ Chief Judge:--

The addtional evidence called for has now been recorded. It is to the effect that the only mines on the Fields which are at present producing any gold are the five mines which are represented before this Court. It is now suggested by the Government Advocate that the gold which was recovered from the possession of Baboo Sab on the 6th March 1910 might have been stolen at a time when other mines on the fields were producing gold or in the alternative that the gold might have been produced from quartz taken from one of the mines which have been closed down for the reason that it did not pay to work them. Either of these theories is possible in the sense that it is not absolutely impossible but both theories are so violently improbable as not in my opinion to merit serious consideration. Even in a Criminal Case (and the present proceedings are merely an offshoot of a criminal case) it is always possible to manufacture a theory consistent with the innocence of the accused but it has been well remarked that 'the doubt to the benefit of which the accused is entitled must be such as rational thinking

93

thinking, sensible men may fairly and reasonably entertain: not the doubts of a vacillating mind that he has not the moral courage to decide but shelters itself in a vain and idle sceptisism.

In the present case it is in my view impossible to entertain ~~my~~ any honest and conscientious doubt. I entirely concur -- with the finding of the Magistrate and I would dismiss this petition.

Chief Judge.

Mr. Justice P. S. Krishna Rao:--

I concur in the conclusion at which the learned Chief Judge has arrived upon evidence now before the Court. It appears to me that there is a little misconception in the mind of the District Magistrate who has referred this case for the orders of this Court as well as in the minds of the officers appointed by Government to oppose the claim of the opponents, in regard to the degree or measure of proof necessary to establish the claim of the latter. In a criminal case where a person is accused of having committed a crime, the rule of law is that the guilt of the accused must be proved beyond all rea-

-sonable

94

reasonable doubt and that neither a preponderance of the evidence nor any weight of the preponderant evidence is sufficient to justify a conviction. But in civil actions and in proceedings of a civil nature (and the present proceedings is substantially one of the latter character, since all that the court has to do in it is to determine to whom the property in dispute belongs,) a different rule prevails. A preponderance of the evidence is all that is required to sustain the decision of the Court, although on account of opposing presumptions or for other reasons it may require more evidence in some cases than in others to satisfy the trier of facts that there is a preponderance. That the preponderance of evidence in this case is in favour of the opponents admits of no doubt. It has already been found by this Court (see the order passed before remand) that the gold recovered from the possession of Baboo Sab must be gold stolen from one of the mines in the Kolar Gold Fields. The evidence now adduced by the opponents which is to the effect that on the 6th March 1910 when the gold was found in the possession of Baboo Sab, the five mines represented by the opponents were the only mines that were producing gold, and that the other mines on the Fields had at least three years previously ceased either to work or to produce sponge gold, coupled with

the

95

the fact that none of these mines has come forward to claim the gold as property belonging to it, affords very strong prima facie evidence that the gold must be the property of one of the five mines represented by the opponents. And the omission on the part of the Government to produce opposing evidence, evidence which it was in their power to have produced if the same was available, only tends to make the case of the opponents still stronger.

Upon the whole, I am of opinion that the preponderance of evidence as well as of probabilities is in favour of the opponents and that therefore the order passed by the lower Court is a correct order.

The Criminal Revision Petition ~~as well as~~ and the Criminal Revision Case should therefore be both dismissed.

13th April 1918.

Judge.

In the Court of the Senior Assistant Commissioner and 1st class Magistrate K.G.F.

Mr.Bosworth Smith.
Mining Engineer.
1st witness for Petr.

I am Superintendant of the Tank Block Mine, which is worked by two companies, the Mysore - West Co., and the Mysore Wynad Co.

We ceased milling in the mine in August - 1907. Since that no sponge gold is produced on the Tank Mine.

We have no claim to the sponge gold connected with the case before the Court. Assuming that my company has a claim to it, I have no -- objection to its being handed over to the Mining Board.

Cross examined by Mr.
C.S.Doreswami Iyer.

There was milling on the Tank Mine from 1894 to 1907. Sponge gold was manufactured on the Mine during all those 13 years. The reason for not claiming the sponge gold connected with - this case is that we ceased milling in 1907. Assuming that the gold ~~is~~ was known to belong to my - company I would claim it myself. If I had only a part claim to it, I would have no objection to the gold being handed over to the Mining Board. This I say as it is a matter of policy.

If no part of it belongs to me it is immaterial to me who takes it. In the present case I cannot say that any part of the gold belongs to my company.

The Tank Mine was represented on the --- Mining Board till March 1911. From that date it retired from the Mining Board. I have not got a map showing the position of the various mines on the Kolar Gold Field. The Tank Block Mine

is

is bounded by Nandidurg on the South-West, the Coromandel Mine on the North and Non-mining land on the -- East.

R. Bocquet.

Inspector of Mines.

2nd witness for Petitioner.

I am the Inspector of Mines of the Mysore Government. I know the East Byatarayaswamy -- Mining Block. The Superintendant of it is Mr. M. Smith. He is gone home on leave. Mr. Kenny is acting for him. As far as I am aware, it has produced no gold. If in any mine gold is produced a return to that effect has to be sent to the Chief Inspector of Mines, every year. I -- understand that some mining work has been done on that mine; but I should say that the mine is still in a prospecting stage. I am not aware that the Mine has paid any royalty to Government. No milling process is going on there, not that I am aware of. If any milling was done there, - presumably I should have seen it. I came to the Gold Field in September 1900. I have been a -- Government official here since September 1903. The mines now paying royalty to Government are:- Mysore, Champion Reef, Oregum, Nandidurg and Balghat, Coromandel, Road Block, and Nine Reefs were mines which existed once, but they are no longer working. They have been absorbed by the Balghat Mine. Work was ~~absorbed~~ abandoned in October 1904 on Road block and Nine Reefs. Underground and milling operations ceased on Coromandel at the end of February 1907. I do not remember the -- actual date when these were taken over by the Balghat Mine. When these Mines were working - they had milling operations. Mr. Cooke, -----

98

Mr. Cooke, Superintendant of Balghat Company is the Superintendant of all these absorbed mines. I see Exhibit P_1. It is the Report of the Chief Inspector Of Mines for the year 1908-09. In table 4 at the end of the book I find no mention of the Coromandel, Road Block or Nine Reefs -- mines. These were not mentioned in the table - because they were absorbed by the Balghat Co., The same title bears out what I said about there being no milling on the East Byatarayaswamy -- block. There is a blank against the Tank Mine also in this table, which means that there was no milling there either. There is a company - known as the Gold Fields of Mysore, of which Mr. Osborne is in charge. He signs himself as Cashier in charge. The Kempinakote Company's mine is due south of the Mysore Mine, touching the Mysore Mine. The Company known as the -- Gold Fields of Mysore exists, but as far as I am aware it is doing no work in the K.G.F . That Company ceased working about 4 or 5 years ago. I can't say exactly. It does not appear in --- table 4 referred to above, presumably because it was doing no work. As far as I remember that - Company stopped milling 4 or 5 years ago. They had a mill. Sponge gold is obtained from amalgum -- which comes from the mills.

The Kempinkote Company ceased working many years ago before I came here, I think. Referring to this table 4 I find that Mysore Gold Mining Company did some work for the Kempinkote Coy., in 1908-09. That work was suspended in December 1908. Nothing of any importance was discovered

by

99

by such work. The Kempinkote Company is not producing gold, or paying any royalty. On the --- other side of the Road Block there is a mine -- known as Krishnarajapur. As far as I know it has not done any work for the past 8 or 9 years. I do not think that any milling was ever done there. I have never seen any mill there. So, at present there are only 5 mines producing gold on the K.G.F. - Mysore, Champion Reef, Oregum. Nandidrug and Balghat.

Cross examined by Mr. C.S.Doraswami Iyer.

The statistics in Ext. P1 are for the calender year 1908. This is the latest printed Report available. The next report is in the press. During the year 1908, work was carried on ~~in~~ on 8 mining blocks. This is including work done on the Kempinakote Block by the Mysore Co. For the year 1909 there was no work on the --- Kempinkote Block and thus there was mining work on 7 blocks. In 1910 I think there was mining work on the same number of 7 blocks. In 1911 there were six, omitting the Tank Mine ~~for~~ from the date on which that Mine ceased work. There are only 5 companies represented on the Mining --- Board. Mysore, Champion Reefs, Oregum, Nandidurg and Balghat. There were other companies working in the Kolar Gold Field at various times. There were 13 such companies so working in 1900, 10 of which were producing gold and the other three were not producing gold. Mining work was presumably done by all of them but milling was only done by 10 of them. This is according to a - note taken by me from the official report. The names of these companies are:-

100

Mysore, Champion Reef, Oregum, Nandidrug, Balghat, Coramandel, Tank Block, Gold Field of --- Mysore, Nine Reefs and Road block. These were the 10 that were producing gold. Those working but not producing gold were the Kempinkote Gold Fields, the Oriental Gold Mine and the Krishnarajapur Gold Mine. All these are in Bowringpet Taluk. The above list does not include (1) the Mysore Reef Gold Mining Company. (2) The Kolar Central Gold Mining Company. and (3) South East Mysore Gold Mining Company. These were companies which worked at one time or other on the K.G.F. area. These have ceased to do any work, they ceased to do work before 1910. The absence of milling operations does not necessarily mean absence of all mining --- operations. It is possible that ore may be ---- extracted but not milled. The cessation of the milling process on a mine does not necessarily mean that sponge gold cannot thereafter be ---- obtained on that mine.

Royalty is paid to Government on the gross-output.

Re-examination.

The mining companies produced gold only by the milling process and not by any other crude method. When I say that a mine is working it does not necessarily mean that the mine is ~~the~~ extracting gold bearing quartz. of the mines on the K.C.F. working in March 1910 are:- Mysore, Champion Reef, Oregum, Nandidrug, Balghat and East Eyatarayaswamy. In that month all the above except the East Ryatarayaswamy were producing gold. This I say from the reports furnished to us.

101

Further Cross examined.

Gold bearing quartz has been produced on that mine for the past 5 or 6 years up to **how.** This I say because I have seen gold bearing --- quartz collected on the surface of that mine. I have seen quite a large quantity of quartz collected on the surface of that mine. Some of it contained gold.

Howard Harry Osborne.
Cashier Balghat Coy.
3rd witness for Petr.

I am in charge of the Kempinkote Gold -- Field Coy's and the Gold Fields Of Mysore Coy's properties. These companies are not working . The Kempinkote Company has never worked here - indipendantly, not for about 25 years more or less. The Gold Fields of Mysore Company ceased working about 7 years ago. That Company was not producing any mill gold in March 1910. There was milling done by this Company for about 6 years on and off - before the year 1902. I have no knowledge of there having been at any time any milling done by the Kempinkote Co. Neither of the companies which I represent has any claim to the sponge gold which is the subject of the present case. Even assuming that the gold belonged to either of the companies which I represent, I should -- have no objection to its being handed over to the Mining Board.

Cross examined.

I take care of the buildings, Machinery and plants of these two companies. I have not been authorized by the Directors of these two companies to give away any property belonging to the Company. I have not seen the gold connected with this case. I never claimed it at

102

at any time. When I say that I should have no objection to the gold being handed over to the Mining Board I am expressing my opinion that the Directors will probably have no objection. There is no individual representing ~~any~~ my two companies seperately on the mining Boarad. I have not ascertained the views of the Directors as to --- whether they would have any objection to the - gold being handed over to the Mining Board. Even though the gold is not mine I should have ---- objection to the gold being taken by Government. That is because I believe it is the property of one of the mines on the K.G.F. The ground of belief is my common sense based on my residence here, and my knowledge of the way in which gold is stolen here. This is my belief from what I have heard of this case from the Police. I was also Acting Secretary of the K.G.F. Mining Board. As Secretary to the Board I had no particular reason to form this belief. Even though the gold is not mine I am particular ~~as~~ that the Mining Board should get it.

No Re-examination.

H.M.A. Cooke.
Superintendant Balghat Mine.
4th witness for Petr:

I am the Superintendant of the Balghat Mine. The Balghat Company owns the Coromandal Mine and the Roadblock and Nine Reefs Mines. The Nine Reefs mine came to the possession of the Balghat Co. in 1906, Coromandal in 1907 and - Roadblock in 1909.

I have not seen the sponge gold connected

103

with this case, but I know about it. I am the Chairman of the Mining Board. In March 1910, the Coromandel, Ninereef and Roadblock mine belonged to the Balghat Company. Any gold produced in any of these three mines in March 1910 belongs to the Balghat Company.

Cross examined.

The Balghat Company is not entitled to the gold produced in these 3 mines prior to the dates on which they were respectively absorbed by the Company.

21 To The Same Affrs & the Comptr 923-4 of 18
Orders the payment of Rs [redacted] of-

22 From The Govt Adv 176 4/3/11
Informs that the case has been remanded to the Lower Court for further evidence

23 From The Same. 182 of 183 of 11/3/12
Informs that the case is postponed for hearing on the 18th instt by the 1st Cl Magte U.G.

24 To The Govt Adv, Secy Govt Deptt & the Comptr
J. 2695-7 of 15/3/12
Requests him to appear before the Court of the Session Asstt Commr & 1st Cl Magte U.G.

25 To The Secy. Govt Deptt " 2710 of 15/3/12
Requests him to instruct the Govt in the matter

26 From The Govt Ad 1/4/12
Intimates that the case is posted for hearing

28 From The Govt Adv.
223 of 25/4/12
Reports that the petition of Govt has been dismissed by the Chief Court -